

[Mr. V. Subba Aiyar.]

THE CIVIL PROCEDURE CODE AMENDMENT BILL.

MR. V. SUBBA AIYAR: Sir, leave was granted by the previous Council for the introduction of the Civil Procedure Code Amendment Bill on the 13th March, 1919. The Bill was submitted on the 17th October, 1919. The members will be aware from the size of the Bill that the printing and translation of it should necessarily take a long time. Therefore it was that the Bill in English and in the Vernacular appeared in the Gazette only recently, i. e., on the 29th June, 1922. Leave having been granted in 1919, I beg to move that the Bill be now read in Council.

MR. S. PARAMESVARA AIYAR: I second the motion.

MR. V. SUBBA AIYAR: I may now explain the general principles of the Bill. Before going into the details of the Bill, I may first observe that the existing Civil Procedure Code has been thoroughly recast and the Bill has given it a totally different form. It is therefore natural to question whether we should have adopted such a procedure instead of making the necessary amendments in the existing Regulation itself, keeping its present form. The question probably will be naturally asked by the older members of the legal profession and by the members of the judicial service whose term is almost expiring, whether they should be driven to the necessity of mastering this complicated Civil Procedure Code in the present form instead of being satisfied with the original form with the necessary amendments. My plea for having this particular form is that, in the first place, as all the lawyer members will bear me out, it is a very complicated piece of legislation, and every word in most of its important Sections has received judicial interpretation in Travancore, in British India and in England; so that it is highly necessary that, when a lawyer has to look for a reference on a particular matter, it is desirable that, as far as possible, the Section or the Order or the Rule in the one should agree as nearly as possible with the corresponding provision in the Indian Act. The British Indian Code adopted the old form of legislation, namely, one similar to what we have got in Regulation II of 1065. But they subsequently changed it into Order and Rule. It is not merely for the purpose of copying the British Indian enactment that the same procedure is adopted here. The importance of it is that, where there is no express ruling in the Travancore High Court on any particular matter, we naturally have to refer to the British Indian rulings on that matter or the English rulings also. Further, even though there may be Travancore rulings, those rulings may have to be reconsidered in the light thrown upon the subject by the British Indian rulings or the English rulings. Naturally therefore, every lawyer, when he has to deal with the Civil Procedure Code in court, has to refer to the corresponding provision of the British Indian Act, as also the English law on the subject. That being the case, the present arrangement will facilitate reference.

Secondly, in regard to the most important portion of it, as I said at the outset, it is a complicated piece of legislation, and it is generally only a particular portion of this Regulation that the legislature will have any interest in; that is to say, the substantive portion and the most necessary portion which determines the policy. As for the ordinary Rules which regulate the daily routine and the conduct of the courts and of the practitioners, they may be left to be decided or modified, as the case may be, by two Judges of the High Court, assisted by another judge and legal practitioners. That being the case, it was thought necessary that what ought to go before the legislature should form one portion of the Bill, and what ought to go before the Rule Committee, as will be explained later, should form a separate head, namely, under Order and Rule. This is in conformity with the trend of modern legislation. General principles are regulated by Statute, while the details are allowed to be governed by Rules. In the Companies Act, while the general provisions are included in the body of the Regulation, the details relating to Articles of Association are given in the schedule; so also, Orders and Rules will be law governing courts, unless they are modified in any instance by the Rule Committee. This is another advantage.

Again, so far as the present form is concerned, I may assure my friends that it was after a good deal of discussion with the late Chief Justice, Mr. Raman Menon, that I adopted this particular form. As I said, the only point against me in this matter is that some practitioners may find it difficult to become acquainted with the thing, and, may therefore, be put to some inconvenience. My plea is that the busy practitioners who have got large experience must necessarily by this time have been in a position and have had many occasions to refer to British Indian Orders and Rules. Therefore, so far as they are concerned, the arrangement will not in the least entail any serious inconvenience. Further, with the legal training that the senior practitioners have had and the analytical head that they are bound to have in arguing cases before the court, the quick grasp they will have of all matters must stand them in good stead. A lawyer has to be acquainted with every branch of knowledge in the world, *e. g.*, industrial, medical, sanitary, and, I may even say, theological, and a lot of other subjects, and he easily masters them for the purpose of any case. There could not then be any difficulty for him to master the various Sections of the Civil Procedure Code. So far as the practitioners that have just begun or not yet begun practice are concerned, I do not think that it will be very difficult for them either, because they have to study the procedure necessarily and, therefore, they cannot be put to any difficulty. In the result the advantage of the present form far outweighs some inconvenience to which some of the practitioners or judicial officers may be put, and I think that the Council will approve the form in which the Bill is shaped. If necessary, it may undergo some change as may be found necessary from the discussion of the Bill by the Select Committee or at a later stage. No radical changes have been attempted. It is only the redrafting of the various Sections with the necessary modifications that has been done.

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Then, passing on to the various Sections of the Code, I shall refer to a few of the most important amendments that have been made. The first amendment is with reference to *res judicata*, and this is done to clear all doubts as to what a former suit means. A former suit need not necessarily be one that was filed, but one that was decided formerly *i.e.*, earlier in point of time, and it is such a suit that will be *res iudicata*. Another important matter in which an amendment has been made is this. The High Court at present has absolutely no power to transfer any appeal from the file of the subordinate courts to its own file. This has naturally led to some inconvenience and difficulty. We know as a matter of fact that two or more suits are filed in the same court in which the question involved is virtually the same. The Munsiff before whom the suits are filed decides all these suits together, and generally, I may say, by a single judgment. But, when the matter has to be appealed against, some have to go to the High Court and some to the District Court, with the result that the High Court defer the hearing of the appeal until the appeals preferred to the District Court are disposed of, and if it happens to be a concurrent judgment, it happens to operate as *res judicata* and the parties do not derive benefit from it when they go to the High Court. What is proposed by the Section is that in cases of that kind it is open to the High Court to transfer such appeals from the subordinate courts to its own file. That, I believe, is decidedly a right step, and the parties will not only be not put to any unnecessary inconvenience, but they will even be in a position to save something.

The next matter that I have to refer to is the question of interest. This, to my mind, is an important matter which deserves the attention of the House. Before going into the amendment that has been made in the Bill, I may explain what the law on the subject at present is. Our law is based on two Regulations of 1019, which are nearly a century old. The first Regulation enacts so far as money transactions are concerned that a person is not entitled to claim in a suit more than 12 per cent. interest, and in the case of paddy more than 20 per cent. per annum. The second Regulation enacts that a court may award before decree interest equal to one-half of the amount of the principal and, after decree, interest equal to one-half of the principal in the case of money, while in the case of paddy the amount of interest in such cases may be equal to the principal. These are the main provisions of the existing law. With reference to the second portion of it there was some difference of opinion in the High Court, as to whether the interest amounting to one-half of the principal should be restricted to the date of suit or date of decree. But it has been ruled recently that a person can be entitled to only one-half of the principal amount up to the date of decree. In other words, if a person takes a hypothecation bond at 12 per cent. interest and waits for 4 years without filing a suit, and then if he files the suit, the interest amounting to one-half of the principal will be awarded to him; and, if, owing to the contention of the defendant,

it takes about five or six years before the suit is finally decreed—the result, under the existing law, will be that the creditor who was honest enough to give some indulgence to the debtor and therefore took four years' time to go to court would be prevented from securing the benefit of the advance in the shape of interest owing to no fault of his own, but owing to the delay due to the court or owing to various other circumstances over which nobody has any control. Then again, in regard to the other portion, the court usually allows six per cent. interest. The result is that, if anybody has to borrow from any banker or from his money-lender, he will have to pay 12 per cent. The court allows only 6 per cent. interest. The interest cannot be awarded to the extent of more than one-half of the principal and therefore it is found that it is to the interest of the debtor to see that, as far as possible, steps are taken to prevent the judgment-creditor from executing the decree and throw all sorts of obstacles in his way, so that he may not derive the fruit of the decree itself. That is not my individual opinion. It has been represented at the Sri Mulam Popular Assembly on various occasions by various classes of members, merchants, ordinary ryots and lawyers. I may say that the attention of the Government was pointedly drawn to it by Mr. C. P. Kochukunju Pillai at the last session of the Assembly, by Mr. Krishna Pillai at the 17th session, by a trader at the 16th session, by another at the 13th session, by others at the 10th and 11th sessions and so on.

MR. K. PARAMESVARAN PILLAI: That is only about the interest after the decree.

MR. V. SUBBA AIYAR: Yes, that is what I have said. That then is the existing state of the law, *viz.* that a person cannot, under any circumstances, get, in the case of money, more than half the principal up to the date of the decree and a like sum after the decree by way of interest. In the case of paddy, the amount of interest in either case may be equal to the principal at any rate. He cannot claim interest at a rate more than 12 or 20 per cent. in the case of money or paddy. That is the existing law. While that was so, at the 10th session of the Assembly, a trader or rather a member representing the trading classes brought to notice—

MR. G. PARAMESVARAN PILLAI: May I know who the member was?

MR. V. SUBBA AIYAR: Mr. S. Ganapati Pillai. He brought to the notice of Government that the existing Regulation of 1010 was not working satisfactorily in the sense that it was considerably out of date, that it threw considerable restriction on freedom of contract, that it also interfered with natural rights, and that therefore since the merchants, with their honesty and integrity which are absolutely essential, could not afford to lend any amount at a lower rate, they had recourse to various devices in order to get the same amount which they had to pay to

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others as interest. These were the difficulties pointed out by him. Government referred the matter to the High Court for their opinion. The High Court then consisted only of four Judges. Mr. Ramachandra Rao, one of the Judges, said: "There is no doubt that there is considerable inconvenience so far as merchants and traders are concerned." He was therefore of opinion that, if both the contracting parties were merchants and traders or if one of them was, then it was desirable that they should have freedom of contract, the courts, of course, having the discretion to interfere in cases where it is considered harsh and unconscionable. In the case of a banker, he was prepared to allow compound interest and, therefore, was in favour of modification of the law in that direction. With reference to the third question, *viz.*, as to whether interest on money should be enhanced, he said that, logically speaking, he could not find any distinction between interest at the rate of 20 per cent. for paddy and 12 per cent. for money. Logically speaking both ought to be on the same level. Therefore, interest up to 20 per cent. might be awarded in the case of money also. But he was not for the logical conclusion in such a matter being given effect to and therefore he would leave the matter as it was. Thus, in the result, he was of opinion that the Regulations of 1010 required modification and that the necessary modification might be made. The other Judge that expressed his opinion in the matter was Mr. Muthunayagom Pillai. He said that he was not for absolute freedom of contract. He could not see any reason whatsoever why there should be any difference between paddy and money, so far as the amount of interest was concerned. In the case of paddy, interest equal to the principal was awarded by courts under the existing Regulation of 1010; and he could not see any reason why, if in the case of paddy the lender was entitled to have his interest equal to the principal amount, it should not be so in the case of money also. Thus we find that Mr. Muthunayagom Pillai agreed that the interest should be equal to the principal. With reference to the other matter, he said that interest after the decree should not be in any way restricted and that it should also be equal to the whole of the principal. He was not for absolute freedom of contract being restored and the Regulations of 1010 repealed *in toto*. He was only for some modification in those Regulations. The next Judge that expressed his opinion was Mr. Krishnan Nair, the then Chief Justice. What he said was that there should be freedom of contract and that it was absolutely undesirable that any restraint should be put upon the people in that matter. What he said was this:

"People do not require perpetual spoon-feeding. They may be allowed greater freedom and be treated as capable of taking care of themselves. The policy of keeping them in a state of pupillage for ever is not calculated to develop in the people of Travancore the spirit of individuality and self-reliance. They may therefore be allowed freedom of contract, courts of course being given power to give the requisite relief when they think that the terms of the contract are unconscionable."

Mr. Justice Viraraghava Aiyangar, the present Chief Justice, also said that there should be freedom of contract between the parties, provided it was not unconscionable, and he further stated that, so far as the amount of interest was concerned, it might be equal to the interest that was claimable in the case of paddy. So that, taking all these opinions together, the result is, as everybody can see, that Regulation I of 1010 requires modification, and that there should not be any difference whatsoever so far as the amount of interest is concerned between paddy and money. Then again, in the case of merchants, an indulgence may be shown, particularly so far as compound interest or a higher rate of interest is concerned. Government accepted the view of the Chief Justice and Mr. Viraraghava Aiyangar who said that freedom of contract might be allowed to parties, so that they might agree between themselves as to any rate of interest, courts being empowered to interfere only when the rate of interest was unfair and unconscionable. With the above object in view, a Bill was introduced in the Legislative Council, repealing Regulation I of 1010 and allowing freedom of contract; but it was objected to by the non-official members on the ground that such a revolutionary change as that, *viz.*, the complete repeal of Regulation I of 1010 was uncalled for and that it was not time enough for the people to have recourse to freedom of contract. As many of the non-official members were against the measure, the Bill was withdrawn out of deference to their wishes.

This was, I believe, in 1911. After that, when the existing Civil Procedure Code was taken up for revision, it was thought necessary to give consideration to the various representations on the subject, and the provisions contained in the Bill are the result.

Now, I may explain what the provisions in the Bill are. In the first place, there is absolutely no objection whatsoever to the borrower paying any rate of interest to the lender under the existing law. If it is actually paid or if all the interest is added to the principal amount and a fresh contract entered into, courts will not interfere with such liability. Courts will interfere only in cases where a person claims more than 12 per cent. interest in the case of money. Courts will not grant more than 12 per cent. interest in the case of money and more than 20 per cent. in the case of paddy. The present attempt is to remove the difference between paddy and money as regards interest and thereby increase the rate of interest, especially in view of the fact that the rate of interest in the market has recently gone up considerably. It is with the knowledge of all that the 3 per cent. and 3½ per cent. interest on Government securities has gone up considerably higher now than before; and therefore they have affected very seriously the transactions between the ordinary banker and the merchants. Unless therefore there is some provision enhancing the rate of interest whereby, if parties are willing to pay interest up to 18 per cent. courts should not interfere, considerable hardship will be caused to the parties concerned. What the present Bill says is that courts may grant interest up to 18 per cent. Even there, it is discretionary for the court to decree less. But the court will not be justified in refusing it arbitrarily.

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up to 18 per cent. That is what the present Bill proposes to provide. If in the case of paddy one can pay interest up to 20 per cent. why should he not pay it up to 18 per cent. in the case of money? This rate has been reduced to 18 per cent. in the case of chitty transactions and in the case of Jenmies and Kudiyans. It may be said that the persons who borrow are agriculturists. I know that an opinion is entertained by some that, Travancore being an agricultural country and the borrowers agriculturists, the rate of interest in this country should not be increased. To this, I shall only say that if we go further north, it is the agriculturists who borrow. They borrow paddy at 20 per cent. interest, *i. e.*, at a higher rate than is allowed under the Bill. Under the old Regulation, that is legitimate. The present Bill proposes to reduce it by 2 per cent. and not to enhance it. According to the Bill, money is not to be regarded as in any way different from paddy. This will enable courts to award interest up to 18 per cent. and I think this cannot be considered going too far. Then going to the next portion of it, *viz.*, how much the interest should amount to, I have read out to you the opinion of the Judges of the High Court that if the amount may be equal to the principal in the case of paddy, there is no reason why it should not be so in the case of money also, and therefore it is said in the Bill that the amount of interest up to the date of the institution of suit may be equal to the principal. It is only the interest that the judgment-debtor has got to pay every month or at any other interval as agreed to by him. If he did not pay or if he promised to pay at a future date and if the creditor showed him some indulgence, it is not fair that the latter should be asked to forego the interest to which he was legitimately entitled.

With reference to the other portion, *viz.*, interest from date of suit to date of decree, I think it will be agreed by all that for the delay in the administration of justice, the party ought not to suffer and he should not be called upon to forego the interest for that period. So also after the date of decree, obstacles are sometimes thrown by the judgment-debtors. Once the suit is filed, there is, strictly speaking, a legitimate and a formal demand for payment of money and if a debtor will not pay it, irrespective of the pendency of the suit or delay in the execution of the decree, whatever be the amount of interest that may be decreed by the court, the judgment-creditor should be entitled to realise it. With reference to the third portion, *i. e.*, compound interest, we all know—those who have got any dealing with banks or bankers know—that at the end of every year, on all our deposits, they calculate interest, that this interest is added to the principal, and that the amount is entered in our pass-book as principal, and we claim and do receive interest accordingly. If in the case of a banker he has to pay compound interest to his depositors and customers, I do not see why he should not receive compound interest from his debtors. In such a case, it is distinctly provided that there should be a written agreement to the effect that the

debtor agrees to pay compound interest or that there must be usage to that effect. Otherwise, compound interest cannot be claimed. These are the three main provisions that have been made in the new Bill as regards interest.

The next matter I may draw the attention of this House to is the provision contained in Sections 53 and 54. Under the existing Regulation, there is no particular provision to exempt any portion of agricultural produce from attachment. It may be that, in many cases, whatever the agriculturist has got by way of agricultural produce is attached. It will not then be possible for him to live till the next harvest and he will not be able to proceed with his cultivation for the next crop. Hence Section 53 provides that it is open to the Government with reference to all agriculturists or any particular class of agriculturists to declare that any portion of the agricultural produce or any particular class of agricultural produce shall be exempt from attachment in execution of a decree, so that the agriculturists may enjoy the privilege of continuing the cultivation and may be able to live until the next harvest comes.

The next provision is about public nuisance. We know that, in the case of a public nuisance, nobody is entitled to file a suit until he is aggrieved. He must prove that he is damnified. If there is no such proof he is not entitled to sue. We know, as a matter of fact, that although a person may not be prejudiced by a nuisance, the public as a class may be prejudiced. In such cases, it is deemed desirable that somebody should come forward and see that the nuisance is abated. It is proposed to empower the Dewan or some one with the permission of the Dewan to institute a suit to remove such nuisances.

Then there are particular Sections which provide for the making of Rules. I said that the Order portion of the Bill is only a matter detailing the procedure that has to be followed by or in courts. That procedure may be modified by the High Court. The High Court now does it generally by means of circulars. It is not necessary that the Council should be inflicted with the details of procedure, whenever it has to be modified. It is therefore thought that, being a matter which is of peculiar interest to and which is peculiarly within the knowledge of lawyers and Judges, it is desirable, instead of trying to bring in small amending Bills for insignificant matters, to leave such amendments to the Rule Committee. This committee is not to consist of Judges alone. It is to consist of the Chief Justice and a Judge of the High Court, a District Judge and two High Court Vakils. These Judges and Vakils who can give expert opinion on the subject should go into the question and see whether any particular Rule in the Order requires any slight modification. What is now generally done by means of circulars would be done by them without being driven to the necessity of going to the Council for amending the Code. In the latter case there will be a lot of delay. It is also better done by a body of experts. Hence the provision relating to the Rule Committee.

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Then we go to Orders and Rules. There is a particular Order for the legal practitioner to follow in regard to pleadings, *i. e.*, as to what all should be said in a pleading. Although as a matter of fact this is generally observed, the Bill states, in a little more detail, what should be done and what not.

Then in regard to interrogatories. At present the provision regarding this is vague. Interrogatories are answered indefinitely and are never answered to the point. Every body tries to take shelter under the exception. There are ever so many circumstances under which the party may decline to answer an interrogatory. What the present Order proposes to lay down is that, after the issues are framed, it should be open to a party before letting in evidence to ask the opposite side to say whether he admits any particular fact, and if he does not admit it, the cost of proving it should be borne by the party who does not admit it. As a matter of fact, when the allegations are recorded and issues are framed, great care is taken to record admissions and denials. All the same, what the party says is "I do not know" or "I am not aware". The genuineness is admitted. According to this particular Order, any party may ask the other side to say whether he admits a particular fact or not. This will necessarily reduce the amount of evidence which one has to give.

The next point is with reference to preliminary and final decrees. A distinction is now made between a preliminary decree and a final decree, and it is made obligatory upon a person who is not satisfied with a preliminary decree to appeal immediately. If he does not do so, the appeal is barred. A preliminary decree may be made in suits for the dissolution of partnerships, for account, &c. For instance, if after the court decides that the shares should be distributed in a particular way and after that the commissioner makes a report and the various items are allotted to each individual, a party goes on appeal and says that the preliminary decree is wrong, a good deal of money and time will have been wasted by the party. Therefore, it is provided that, if a person is not satisfied with a preliminary decree, he may straightway prefer an appeal against it and, if he fails to do so, he shall not be allowed to take objection against the preliminary decree later on.

The next important matter is the provision about the restitution of conjugal rights. We know that in the Criminal Procedure Code there is a provision that, if a court decrees restitution, the man or woman who is not willing to obey the decree may be sent to prison. Whether it is the husband or the wife, it may not be that the decretal portion will be satisfied by the enforcement of the decree in that manner. So that what the Bill provides is that a court may say that a wife shall not be arrested if she refuses to obey the decree. Again in the case of a husband, if he disobeys, he may, in the decree, be asked to award maintenance, because

by no means of enforcement can the court make the parties live together, if they do not like to do so. Hence some safeguards are provided and the provision as to imprisonment is removed.

The next provision is about the appointment of Receivers. Receivers are now appointed only by the District Courts. The Bill makes a provision according to which even the Munsiffs' Courts can do it. Receivers may be appointed not only under circumstances mentioned in the existing Civil Procedure Code, but in all cases where, in the interests of justice, the court considers it desirable to do so. Wide power is vested in the Government with a view to the appointment of Receivers.

Another amendment that has been made is in the matter of appeals and objections. We know as a matter of fact that all objections have to be filed within a certain number of days, and if they are not so filed, the opinion of the High Court till recently was that the High Court had no power to excuse the delay. Recently, there seems to have been a change to the effect that the question of the delay can be gone into. Then again, if the appeal is withdrawn, the objection *ipso facto* fails. That is also prevented. Then again, objections are allowed to be preferred *in forma pauperis*. Then with reference to appellate powers there seems to have been considerable difficulty until recently. In some matters where a person claims money in a suit against A or B in the alternative, the court decides that the plaintiff shall recover from A and the plaintiff is perfectly satisfied with that decision. But when A appeals and all are parties to the appeal, the appellate court finds that A is not liable, but that B is liable. But the plaintiff not having appealed against the decree, the appellate court has some difficulty in giving a decree against B. After straining the language and fully realising that the party did not prefer the appeal because he was satisfied with the decree, the High Court had to pass a decree against B. The present Bill only legalises or gives recognition to the ruling of the High court and says that the decree in such cases may be modified by the appellate court provided that all parties to the transaction are brought in.

Lastly, there is another amendment, which is with reference to paupers. In regard to suits to be instituted by paupers, there seems to be some restriction. As it is, paupers cannot sue for loss of caste, libel and slander. According to the present Bill, this restriction has been removed.

It is impossible for me to detail all the various provisions from beginning to end, because the Bill is a voluminous one. The whole thing will have to be threshed out by the Select Committee. I have, therefore, given only some of the important outstanding features of the Bill, and I believe that the general principle of the Bill will be accepted by the Council.

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MR. G. PARAMESVARAN PILLAI: Sir, the mover of the Bill observes in the Statement of Objects and Reasons that the existing Code of Civil Procedure has worked satisfactorily for the last 30 years, and that, although several modifications have now been made in the draft Bill, the general principles underlying the present Code are kept intact. There are, however, one or two features of the Bill that should arrest our attention.

In the first place, the new Bill has rearranged the Code into 125 Sections and 47 Orders with a varying number of Rules under each Order. In thus rearranging the Code, the mover has only mainly followed the method adopted in British India in 1908. But the question remains whether such a change—rather a close copy—is necessary or desirable in our case. The reasons that influenced the British Indian legislators to effect the change do not, as a matter of fact, exist in this country. The special committee appointed in British India to amend the Civil Procedure Code of 1885 observe:

"The matters in which the Code of 1885 has proved defective are, for the most part, matters of detail, and they arise, as it seems to us, mainly from the fact that it is impossible to frame a fixed and rigid Code in such a manner as to sufficiently meet the varying needs of an area so diversified as that to which the Code applies. In our opinion it is essential that there should be some machinery to enable variations to be introduced in procedure to meet the different requirements of different localities as well as to enable defects to be remedied as they are discovered without resort to the tardy process of legislation."

So, they rearranged the Code retaining in the body of the Code only those provisions in regard to which some degree of permanence and uniformity was desirable, the other matters being left to Rules capable of alteration by each High Court.

It will thus be seen that there was a real necessity for the change in British India, as it was well-nigh impossible for each High Court or Province to put forward its own amendments and press upon the Imperial legislature to effect suitable changes in the procedure from time to time.

In Travancore, however, no such difficulty can arise, since as at present constituted, it has got only one High Court, and the rules of procedure and practice laid down by that court do not come in conflict with any others of the same nature. In fact the author of the Bill himself does not choose to support the change on any such ground. On the other hand, it has been stated that the new Bill provides a means to easily alter mere machinery. This argument will not stand scrutiny. As already observed by me, in the case of the several British Indian High Courts, this argument might apply very well. But, in Travancore, at the present moment, the Legislative Council can meet as often as the Dewan chooses to summon it. In fact, our complaint is that the Council is not summoned as often as it should be. The Law Member himself will, I am sure, certify to the utmost readiness of this House to suspend in case of necessity all rules of business and forthwith pass

Bills involving non-contentious amendments. If, however, important changes are proposed to be enacted, it is extremely undesirable that this Council should be replaced by any other machinery. Further, what is the nature of the machinery that is sought to be created to provide for an easy method of bringing about amendments in the procedure law? A Rule Committee consisting of two High Court Judges, one District Judge and two High Court Vakils, have firstly to make a report to the High Court on any proposal to annul, alter, or add to, the Rules. These amendments will then be published before the High Court take action thereon. Subsequently, the High Court will frame the Rules and forward the same to Government for sanction. On obtaining such sanction, the Rules will be published in the Gazette and will become law. Now I ask which is the more tedious process. At any rate, is it likely that the delay in getting the necessary amendments passed through the Council will be more than in the case now contemplated by the mover of the Bill? I am sure that it is far easier to move the Law Member of the Government to introduce amending Bills in the Council and get them passed than to induce the Rule Committee and the High Court to go through the elaborate procedure prescribed for them in this behalf.

Thus then, both the reasons that brought about the change in British India are non-existent in our case; and there is no virtue in slavish imitations.

It is conceded by the mover of the Bill that the change introduced will cause some inconvenience to lawyers and litigants. It is, however, said to be but a temporary disadvantage. It may be so in the case of those who are about to retire from the Judicial Department or to give up the legal profession. But it is likely to continue to be irksome to those who will often have to refer to these several Sections, Orders and Rules. But may I ask where is the necessity for putting the lawyers even to this temporary disadvantage? My only regret is that the Law Member too has no sympathy for the lawyer class. The lawyers and litigants in Travancore had no voice whatever in the rearrangement of the Code brought about in British India fourteen years ago. If, however, the Law Member will give us the assurance that every change in the British Indian enactment, either in form or in substance, will also be incorporated in the Statute Book of this land, whether the local conditions demand it or not, we shall put forth our endeavours to obtain representation in the British Indian legislature in order to safeguard our own interests, and, I hope we can count upon the weighty support of the Law Member in this our legitimate aspiration.

Sir, it appears to me, as I hope it does to many of my lawyer friends in this House, that the proposed rearrangement is wholly unnecessary and such modifications as are necessary may well be introduced without disturbing the existing arrangement.

There is one other matter of principle which I wish to comment upon. The Civil Procedure Code Amendment Bill contemplates the repeal of the Interest Regulations, I & IV of 1010. Apart from the merits

[Mr. G. Paramesvaran Pillai.]

of the question, I strongly object to the mode in which such an important law of the land is sought to be modified. The law relating to interest has been in existence for now nearly a century and one provision in the new law relating to Civil Procedure abrogates this ancient and humane law. I am indeed surprised that, in an essentially agricultural country like Travancore, where it is notorious that, owing to natural causes, the peasantry is steeped in debt, Government should have preferred to take up the cause of the usurers and money-lenders to the positive detriment of the agriculturists who mainly contribute the really stable source of national revenue.

Again, greater publicity should have been given to the alterations of a century-old law. If the Law Member had introduced an interest Bill by itself, incorporating the change now sought to be introduced by Section 31 of the new Civil Procedure Code, I am sure that the whole country would have recorded its emphatic protest against the contemplated measure. But the tedious Civil Procedure Code seldom attracts the attention of persons other than those who like me are obliged to closely study it to earn their daily bread. It is, therefore, most improper and extremely unfair to the large agricultural population of this country that this change in the rate of interest should now be introduced and in this manner.

It was only on the 1st of Tulam, 1088, that an attempt was made to repeal Regulations I and IV of 1010, when Government introduced an Interest Bill to that effect. When that Bill was referred to the High Court for opinion, two eminent judges of that court who knew well the country and its affairs, I mean Messrs. Ramachandra Row and Muthunayagom Pillai, strongly disapproved the change. That is what appears from the abstract of the Proceedings of the Legislative Council published in the Gazette. In the Council, all the non-official members including Mr. Richardson, the European planters' representative, opposed the Bill, and the Government withdrew the same. I do not think that anything has happened since then to induce the Law Member to again come up with an almost similar proposal at this juncture. I am really at a loss to understand why Government should be so anxious to plead for and espouse the cause of the banker and the capitalist at the sacrifice of the poor agriculturist. I can well appreciate the member representing the hundi merchants and the village money-lenders growing enthusiastic over a demand for the award of enhanced rates of interest. I must say that a similar demand from Government proceeds with ill grace.

I must also submit that, however much Government might feel ticklish in the matter of the banker and the capitalist, it will be a grave betrayal of trust on our part, if we, who represent the agricultural classes, do not strongly protest against the contemplated change intended to favour the hundi merchants. I fail to appreciate the argument of the learned mover of the Bill that various devices are resorted to by lenders and borrowers to defeat the existing law. On the other hand, I can only

sympathise with the Government in their confession of weakness to punish or otherwise prevent such defiance of law. I wish the Law Member will devise some measure to strictly enforce the law as laid down rather than abrogate the law for fear that it may be defeated.

It is said that interest has been enhanced only up to 18 per cent. and that it is now allowed in the Jenmi and Kudiyan Regulation. But it is noteworthy that this latter Regulation itself is in the melting pot. I have, however, no objection whatever in amending Regulation IV of 1010 so as to enable courts of law to adjudge interest from date of suit to date of realisation, without the restraint now imposed by that Regulation. Otherwise, the proposed change is objectionable. At any rate, the change itself should be by way of another legislation and the Civil Procedure Code need not be the means for effecting the same.

I would, therefore, request Mr. Subba Aiyar to withdraw his Bill and reintroduce it shorn of its objectionable features. I hope further that, in the decision of the questions of principle raised above, my friends, the official members, will be restored their freedom of conscience and that they will be allowed to vote as they choose and not *en bloc* in favour of the Bill moved by the Law member.

DEPUTY PRESIDENT: As regards that matter, I am not in the confidence of the Government.

MR. G. PARAMESVARAN PILLAI: We can only look up to the President in such matters.

DEPUTY PRESIDENT: There is nothing in the Legislative Council Regulation, Rules, or Standing Orders which confers such powers upon me.

MR. N. RAMAKRISHNA PILLAI: Sir, the new Bill that is sought to be enacted is one of the most important items of legislation that this Council has to undertake. The object of revising and re-enacting the old Code is said to be to bring it into line with the several judicial decisions since passed as the law in British India. Though the general principles underlying the existing Code have been kept intact, several modifications of a very important character have been introduced into this Bill.

The main features of the Bill that require careful consideration by this House are its rearrangement owing to the adoption of the division into Orders and Rules, and the provision made for the alteration of the Rules without the intervention of this Council, by giving power to a committee to be appointed in accordance with the Rules mentioned in Part IX of the Bill. The reason for adopting this course here is said to be that the Rules being mere details of machinery are fit to be changed and adapted to suit new or changed circumstances by means other than that of a resort to the legislature, and that it is of great advantage in that it provides a means to easily alter mere machinery. Another advantage claimed for this method is its merit of imitation of the

[Mr. N. Ramakrishna Pillai.]

British and British Indian enactments and its consequent usefulness for purposes of reference.

The result of adopting this change will be to place in the hands of a small body of lawyers the major portion of one of the most important enactments affecting the welfare of the people, to be changed as they liked and whenever they liked. The ultimate right conferred upon Government of sanctioning the alterations of the Rules proposed by this body is hardly likely to be of any practical advantage to the public. Under the old Code the High Court had the power to make Rules to regulate its own procedure and the procedure of the courts subordinate to it; but it had no power to make rules to regulate any matters which were dealt with by the Code itself. Under the Bill now moved for acceptance, the major portion of the law of procedure could be altered by the Rule Committee proposed to be created by it. What the Council is called upon to do now is to provide a procedure for the present, but that procedure may be altered at any time and from time to time as seems fit to that committee. It has also to be remembered that the division between matters which should be dealt with in the Regulation and matters which should be left to Rules is not easy to determine on any logical basis, and that the matters dealt with in the Rules portion of the Code are matters of as much importance from the standpoint of the litigant public as those dealt with in the Regulation itself.

This being the situation, we have to consider anxiously whether it will be wise on our part to deprive ourselves of the chance of influencing any subsequent alterations in the law, and whether after all the reasons adduced for such a fundamental alteration of the existing Code are sound and convincing. We have, for this purpose, to examine the causes which led to the adoption in British India of the existing Code of procedure. The British Indian enactment is, as everybody knows, a law passed by the Indian Imperial Legislature and affects the whole of the vast continent of India and Burma, comprising the jurisdictions of several High Courts and Chief Courts. There the aim of the framers of the Act has been to keep within the main body of the Code all matters which affect more than one Province and matters in which it is essential that there should be uniformity in all the Provinces. There the conditions and requirements of the several Provinces differ so greatly that a rule of procedure which may be proper in one Province may be entirely inappropriate in another. It was mainly to ensure uniformity all over India in respect of the general principles of procedure that the differentiation into Sections and Rules was adopted in British India. In addition to all these considerations the difficulty of moving the Imperial legislature for every desirable change in the law was a matter of paramount consideration with the British Indian legislators. None of these considerations apply in the remotest degree to the state of Travancore. It appears to me unnecessary and unjustifiable to give our assent to a delegation of the power of altering and re-enacting the main provisions of the law of procedure to a handful of lawyers, however eminent, when

a resort to this House for any desirable amendments of the law is so very easy and is certainly more wholesome. My first objection, therefore, to the present Bill is that the proposed arrangement is not very necessary and that at any rate Part IX of the Bill may be expunged.

The new Bill which is on the model of the British Indian Act is also a reproduction of it, word for word. About 36 Sections and portions of 9 or 10 Sections relating to chartered High Courts and other matters wholly inapplicable to Travancore have been omitted. In the Rules portion of the Code five Orders and also about eleven or twelve Rules here and there have been omitted for the same reason. In judging of the merits of the change we have only to read through any good commentary of the British Indian Code and see the working of that Code in British India for the last fourteen years. The only provisions not found in the British Act are:

Section 8 in the Bill, relating to suits in respect of Kandukrishi and other lands; *Section 26, clause (2)*, relating to cancellation of the notification provided by that Section; *Section 31, clause (1)*, relating to interest before suit; *Section 80, clause (d)*, relating to second appeals on conflicting findings of facts; *Section 124*, relating to the Edapalli Chief; and *Section 126*, relating to Palace servants.

All these provisions except *Section 31, clause (1)*, have been adopted from our old Code itself. Rule 4 in Order XXIII, Rule 14 in Order XXVI, and Rule 4 in Order XXVIII are also adopted from our old Code and not found in the British Indian Code.

A provision of a novel kind has, however, been introduced in the Bill, though the Rule thus sought to be introduced is and ought to be a Rule of substantive law not properly appertaining to a Code of procedure. I refer to clause (1) of *Section 31* relating to interest before suit on which the learned mover of the Bill dwelt at considerable length.

The laws attempted to be repealed by this clause are two of the oldest and most beneficent Regulations enacted by the State in the early years of the century, viz., Regulations I and IV of 1010. These two old Regulations have stood the test of time for nearly 90 years and their effect in protecting the agricultural population of Travancore from the clutches of the indigenous and foreign money-lenders has been thankfully recognised by the public; and it is to this wise and beneficent measure that we are mostly indebted for the check placed upon the exploitation of the country by foreign capital. Travancore is essentially and almost wholly an agricultural country, industry and commerce having not as yet afforded any scope whatever for the sustenance of its people. The proposed law might be suited to the requirements of an industrial or commercial population and may even be necessary after a certain stage of progress has been reached. But the growth of industry and commerce depends upon other important considerations than the law of interest. It is the personal law of the people and the commercial policy adopted and pursued by the State that are the determining factors in the advancement of commerce and industry.

[Mr. T. K. Velu Pillai.]

The majority of the people of Travancore follow systems of law which do not give individuals the advantage of credit, and the commercial policy of the State is bound up with that of British India. Under these circumstances a law removing restrictions on the freedom of contract appears to me not only unnecessary but positively mischievous. There is no fascination in the phrase 'freedom of contract'; in fact, the tendency of modern legislation is to impose restrictions on such freedom wherever injury or hardship results from its operations. It may also be useful to remember that, without absolute freedom of contract, the object of rendering help to the trading classes will be frustrated and real benefit intended by this provision will be reaped by the ordinary money-lender who is ever ready to lend money on the security of land. Where loan transactions are mostly conducted on the security of lands I do not see any reason why a greater rate of interest should be allowed, unless it be to help the greedy money-lender to take advantage of the difficulties of a necessitous cultivator. The protection of the needy and thriftless agriculturist aimed at by the enactments of 1010 would be wholly taken away, if this provision was introduced in the Code, and the existing laws repealed. An attempt to repeal these two Regulations was made only a few years ago and I hope that the present attempt close upon the heels of the last will meet with the stoutest opposition from this Council. I would, therefore, strongly object to the proposed repeal of the Regulations of 1010 and the insertion of clause (1) in Section 31.

There are other changes introduced in the Bill which may work hardship to the public, but, as I hope this House will have an opportunity to go minutely into those amendments, I do not propose to dwell upon them in detail.

There have been subsequent amendments in the British Indian Act, as for instance by Act XXIV of 1920, which could also have been incorporated in this Bill. I would also suggest the necessity of making the Code a more comprehensive one by incorporating, or in cases where this Council is powerless to enact, by calling attention to the existence of such rules of procedure as Regulation IV of 1061, the Royal Proclamation regarding the institution of suits by the British Government, etc. Such a course has been adopted in the British Indian Code, as for example in Section 79.

With these observations I support the proposal for the amendment of the law.

MR. T. K. VELU PILLAI: Sir, the Civil Procedure Code has occupied the attention of the Legislative Department for the last five years. This department appears to have developed a high proficiency in the art of photography and through its assiduous labours the Bill has emerged out of the dark chamber in a presentable form with the family likeness of the adjective law of British India. The division of the Code into appropriate Sections and Orders intended to bring our law into line with that of British India, to facilitate reference to British Indian authorities and perhaps to make comparative study easier than

it is. We are now only on a general discussion of the Bill. Sir, the Civil Procedure Code is a large and mighty river fed by numerous rills and rivulets, Sections, Orders, Rules and Forms extending over a wide variety of subjects, from the transfer of ownership and possession through the operation of decrees down to the comparatively unimportant but equally necessary rules relating to the deposit of fees and the service of summons. The river is full of rocks and shoals, of old-fashioned forms and arbitrary technicalities. We have therefore to scrutinise each Section and each clause before we can allow the Bill to go out of this Council to wait upon the Royal pleasure for Highness' sanction.

I do not propose to examine the whole Bill and in any detailed manner. There is a matter of important principle involved in the new Section 31 and to my mind that is the most important Section in the Bill. This Section, as Mr. G. Paramesvaran Pillai puts it, has been very deftly incorporated in this lengthy Code covering hundreds of pages. The Section says :

"In suits for money or for grain, no court shall in respect of the period antecedent to the institution of the suit allow in its decree a greater rate of interest than 18 per cent per annum and the amount adjudged in interest for such period shall not exceed the principal amount sued for."

The most important points sought to be changed by the present Bill are to provide increased rates of interest for any length of time between the filing of the suit and the passing of the decree, to give compound interest and such other matters. I am not satisfied with the reasons given in the Statement of Objects and Reasons published in the Gazette, nor have I been benefited by the wealth of reasons Mr. Subba Aiyar has given on this occasion. He divides his reasons into four classes : (1) the length of time that has elapsed since the Regulations of 1010 were passed ; (2) the opinion of laymen, lawyers, merchants and others ; (3) the devices resorted to by money-lenders ; and (4) the difference between paddy and money loans. I am not satisfied with any or all of these ostensible reasons. Regulation I of 1010 is one of the most sensible laws passed by the Travancore Government and I think it deserves to be preserved in our Statute Book, as a model of legislative wisdom. The reference to laymen and bankers, to my mind, conveys no idea. There is no class of men in the world called laymen. I could understand doctors and laymen, lawyers and laymen ; but with great respect to my learned friend, I must say that there is no absolute class of people called laymen. The argument about merchants is equally unconvincing. The only class of merchant who cares for the enhancement of the rate of interest is the hundi merchant. He is a person who hopes to make much profit in the sombre solitude and sepulchral silence of his treasure-house and the opinion based on the rationale of self-interest will certainly not carry conviction to this House. Lawyers may, no doubt, consider the question of interest with a feeling of detachment, perhaps in a spirit of altruism. But they also come under the influence of certain deep-rooted prejudices, with the notions of the so-called freedom of contract circulating through their blood. Absolute freedom of contract, Sir, is a mirage which will lead us on to

[Mr. T. K. Velu Pillai.] •

destruction. If all of us had equal opportunities for self-improvement, if no man had advantage conferred upon him by law more than upon another, if land were free and capital plentiful, freedom of contract would no doubt be an excellent principle. But civilisation has created vast inequalities. It has made possible the concentration of immense wealth in the hands of a few individuals. It has made money the general medium of exchange, if not the universal object of human desire. The man without money is a body without life. Freedom of contract therefore has very little meaning to us. Now when your laws have reduced poverty to a crime and installed the purse as the motive power of economic activity, when you have been ratifying plunder and tolerating plutocracy for hundreds of years, the Legislative Department suddenly comes forward to proclaim that hereafter freedom of contract will be recognised and protected by the State.

MR. SUBBA AIYAR: That is not it.

MR. T. K. VELU PILLAI: Sir, the philosophy of borrowing is an interesting but a painful study. The majority of the people in Travancore borrow not for speculative enterprises, not for investing large sums in the mines of Kolar or the Klondyke or in the sugar plantations of Mauritius, not to run aerial rope-ways in the Devicolam hills or to have electric installations in the Kallar Valley. But they borrow money for humbler purposes, for the marriage of a daughter or the education of a son, for the purchase of cattle for the plough and sometimes to keep the wolf from the door. Our agriculturists have to submit to the tantalising manifestation of the seasons, and contend against what has become the permanent difficulties of their noble occupation. The rich man has comparatively an easier time. He pays no death duties, no succession fees, no progressive rates and no taxes, no windfall levies as rich men are obliged to do in other countries. To him money has a less marginal utility. It is the teeth that grind and masticate the nut, but it is the tongue that enjoys the relish. That seems to be the difference between a poor man and a rich man in our country. Archdeacon Cunningham said:

"The individual life and conduct are permeated and penetrated by State enactments the individual is what he is and has what he has, chiefly because the State has conferred on him the privileges he possesses."

The law allows a man to keep for himself and enjoy at his pleasure the advantages of inherited wealth and transmitted crime. Freedom of contract is therefore an empty phrase in modern society. The competition between borrowers and lenders is not a free matter as it is generally supposed, but it is a fight between hens and jackals or between frogs and cobras, or as Professor Walker has put it in his inimitable fashion, it is a collision between brittle men of glass and strong rough men of iron. At any rate it is a fight between two groups of people, the one famished and unprovided with arms, and the other drilled into efficiency by perfect commissariat arrangements, and provided with all the engines of destruction, with machine-guns and asphyxiating gases.

Individualism, Sir, is well and good up to a certain limit. It has had its day. It has had its approval and obedience from statesmen and thinkers. But the history of the teaching of the various economists, like Adam Smith and Ricardo, of great thinkers like Bentham and Mill, the latter-day opinion of that intractable free-trader, Richard Cobden, and the subdued admissions of that great judicial exponent of the cult of individualism, Baron Bramwell—all these show that individualism and competition, although excellent in themselves, are not always advantageous to the progress of society. It is in the interests of society that private property is allowed by the State. Therefore, when the interests of society call for a change, when it is proved that certain beneficial measures are necessary, the State should not shirk its responsibility, but must come forward and face the situation with courage. This principle has been accepted and acted upon in all modern States. The maximum duration allowed for copyrights and patents, the regulation of building in cities, the prevention of the sale of deleterious articles of food and drink, the legislation relating to factories regulating the hours of work, and the laws relating to old age pensions and compulsory education are all infringements on the freedom of contract. The celebrated maxim "once a mortgage always a mortgage" was entertained by English Judges for the protection of the borrower against the lender, of the weak against the strong. In France a spendthrift may be restrained from wasting his property by an application on the part of his relatives. We need not go to Europe or America for this excellent principle of State action. Our own legislature has made breach of contract an offence (*vide* Regulation II of 1080). The Coffee Stealing Prevention Regulation, the Rubber Thefts Prevention Regulation, all these indicate that the legislature is prepared to come to the rescue of the weak against the strong. The Chitties Regulation also shows that the Government will not look on with apathy when freedom of agreement is abused by individuals. The present Bill itself continues the practice of exempting various classes of goods from liability to attachment and sale in execution of decrees. It has even made additions to the list for the benefit of the agricultural classes. Here is the latest instance of public policy trenching upon the rules of freedom of contract. I ask but for an extension of the same principle to the subject of interests on loans. The Bill has reduced the maximum interest on paddy from 20 per cent. to 18 per cent. I shall not believe that it was due to a desire for uniformity; for in spite of a clumsy averment in the Statement of Objects and Reasons, I cannot believe that the framers of the Bill are ignorant of the obvious difference in the relative nature of paddy and money, of which the former is subject to greater fluctuation in purchasing power than the latter. The Section under discussion exhibits the maximum power of concealing the real danger caused by the change. It is delightfully vague and positively mischievous. It proclaims that the interest may be 18 per cent. before the institution of the suit, but allows the court to decree a still higher rate "without any restraint on the amount" between the date of suit and the date of realisation. It exults in the repeal of the Regulations of 1010 and the raising

[Mr. Paul V. Daniel.]

of the total interest from one-half of the principal to the full amount. I do not propose to consider this question in any greater detail at present and I beg to associate myself with the opinions expressed by my friends on this side of the House.

I have however a word to add to what has been said regarding the second part of the Section. That part shouts out in a portentous voice that the demon of compound interest who has till now been made to sleep in chains at the feet of the Goddess of law has shaken off his fetters and made himself ready with the assistance of the Law Member to pursue his ruinous avocations. The effect of all these legislative originalities is to make borrowing a prelude to pauperism. The Law Member will tell us in his reply that, if compound interest is an evil, it will affect the banker as well as his borrowing customer. Once again, I must repeat that the banker is in a position of advantage over the borrower, strong enough by his money and his large credit to dictate his own terms when the bargain is struck. This Section, Sir, is therefore a veritable axe laid at the root of all peace and prosperity in this land. The attempt to smuggle a packet of substantive law into a load of adjective law is not worthy of praise. And when we remember that the Interest Bill introduced into this Council some twelve years ago was withdrawn by the Government of Mr. Rajagopalachariar as a result of united opposition on the part of non-officials, this wilful action of the framers of the Bill invites the rejection of the whole Bill in such manner as the Abkari Regulation provides for the confiscation of the whole apparatus of illicit transportation of contraband articles. When we recollect that the present act of legal smuggling has been attempted by the framers of the Bill with the history of the Interest Bill fresh in their memory, any formal or direct evidence is not necessary to establish *mens rea*. But I hope this Council will rise to the full height of its generosity if the mover will change his method and withdraw this particular Section. We shall, otherwise, be constrained to reject the whole Bill. I hope the learned mover will make good use of the alternative now offered to him.

MR. PAUL V. DANIEL: Sir, the present Code of Civil Procedure, of course, requires revision and re-enactment. I have not anything important to say about the form adopted in the Bill in question; but I feel bound to say a few words regarding the attempt made in the Bill to repeal the time-honoured Regulations of 1010. At a time when our benign Government is rendering every possible help to Co-operative Credit Societies, agriculturists and promoters of productive industries, an attempt made to help the local bankers and other money-lenders is indeed a step taken in the wrong direction. Repealing Regulation I of 1010 and dispensing with the moral check embodied in it would be divesting Travancore of one of its time-honoured virtues. The Regulations of 1010 do require revision, but not on the lines suggested by the learned Law Member. The difference in interest for paddy and for money found

in the Regulations of 1010 might have been due to the scarcity of money or to a certain custom which existed in the country then. We are however not concerned with it at present. The fact that in respect of paddy the interest awardable is 20 per cent. cannot lend support to the proposal to increase the rate of interest awardable in the case of money. The rate of interest awardable in the case of paddy may safely be brought down to 12 per cent. Our Government helps the co-operative banks in every possible way. In these banks money has to be received at the most only at $7\frac{1}{2}$ per cent. and money has to be lent at $10\frac{1}{2}$ per cent. If by legislation we secure a very large interest to the money-lenders, it will be helping them to pay a proportionately large interest to those who deposit money with them. This will work against the growth and development of the co-operative banks. The fact that it is safe to invest money in the said banks would not by itself be sufficient to induce persons to invest money in them. Another serious harm that would result is that when people get a large interest from banks they will not invest money in productive industries and in permanent landed property and the improvement of it. Investment in industries has not in our country worked up to more than 12 per cent., while investment in land does not even work up to 6 per cent. People will be tempted only to bargain in money-lending. The needy people will go on borrowing and they will be played into the hands of the bankers and other money-lenders. As the law stands, there is a moral check on the money-lenders from unduly exacting gain from the needy borrowers. In no case then, should the interest be increased in the case of money as suggested by the learned Law Member, and every possible effort should be taken to bring down the interest awardable in the case of paddy to the same level as that of money.

MR. S. SUBRAHMANYA KARAYALAR: Sir, I quite agree with the Law Member in saying that the borrowers are mostly agricultural people and I need not impress upon the House that, as it is, the Agricultural people are going down day after day because of the fact that under the present law they are obliged to pay 12 per cent. interest.

MR. T. K. VELU PILLAI: I would like to put one question to Mr. Karayalar, and that is whether he is speaking for agriculturists or for money-lenders.

MR. S. SUBRAHMANYA KARAYALAR: I cannot understand what my friend is driving at. The fact that paddy-lenders get 20 per cent. interest is no reason that interest on money should be raised to 18 or 20 per cent. and I would rather move the House to reduce the rate of interest for paddy. The fact that once a blunder was committed in the case of paddy-lending is no reason to increase the percentage of interest for money. This interest can never exceed 50 per cent. of the capital. If the interest is not realised in time, it is the fault of the lender, and the borrower is not to suffer for it. The borrower is always at a disadvantage and is ready to sign any paper. He wants money at any cost. He is not going to find out where he is launching himself by signing the paper handed over to him.

[Mr. J. John Nidiry.]

by his most uncharitable and greedy lender. The agreement between a lender and a borrower will be full of valuable conditions in favour of the creditor and none in favour of the borrower. When Rama and Ravana were fighting and Ravana lost all his weapons, his state of mind was depicted as follows: "கடன்கொண்டான் நெஞ்சம்போல் கலங்கினான் இலங்கை வேந்தன்." And so the borrowers' case should be viewed with greater consideration and sympathy.

MR. T. K. VELU PILLAI: Sir, I must apologise to Mr. Karayalar. (*Laughter.*)

MR. S. SUBRAHMANYA KARAYALAR: I, therefore, in the interests of the agricultural people, move that interest cannot be increased and say that, if it is done, the ruin of the agriculturists will ensue in the near future. I earnestly appeal to this House to devote its most careful and sympathetic consideration to the matter and not to give its consent to any enhancement of the rate of interest. Finally, compound interest is an anomaly and cannot be allowed. I earnestly request the Law Member to delete Section 31 re interest.

MR. J. JOHN NIDIRY: Sir, I concede that certain modifications are necessary in the Civil Procedure Code. But the question is whether these modifications should go to the extent of those in the draft Bill framed by the Law Member. He himself admits that the arrangement now made is a complicated one and I must say that it is not only complicated but even revolutionary, at least in the form in which the changes have been made. The next question is whether such a revolutionary change even in the arrangement of the Sections is necessary for our purpose. I am certainly of opinion—and that is the opinion of almost all the other members on this side of the House—that such an arrangement is unnecessary for our purpose. In British India such a change was found necessary to suit local conditions. The arrangement contemplates that certain Sections of the Civil Procedure Code should be elevated into Sections while others should be reduced to Orders and Rules, etc. The very fact that for some 30 years the present Civil Procedure Code has worked satisfactorily without interference from the Legislative Council is the best proof that its provisions and arrangements are suited to the requirements of our country.

One other new feature we find in the new Bill introduced by the Law Member is the delegation of certain powers of the Council with regard to the Civil Procedure Code to what is known as the Rule Committee. I must submit that this delegation is not very complimentary to this Council itself, especially because the present Council consists of several lawyer members and I doubt the necessity of such delegation to a foreign body. Further there is a provision in the new Legislative Council Regulation for appointing experts as additional members of the Council whenever the necessity is felt for expert opinion. If the practical experience of judges is necessary for

the purpose of any legislation, the Legislative Council Regulation provides for the appointment of such officers. When such a contingency arises, we can have recourse to that provision, instead of appointing a Rule Committee consisting of Judges and vakils. That being the case, I do not see why such an important function of law-making should be delegated to a distinct body which has nothing to do with the Legislative Council.

Another aspect which I have to place before the Council in addition to what has been said by other speakers on this side of the House is that, though human laws or civil laws require some changes now and then unlike the laws of nature or divine laws, still the policy of the legislature should always be to keep the statutory laws also permanent as far as possible unless the necessity for any change of law is clearly made out. We should not go in for changes for changes' sake alone. Are we to make changes in our laws simply because others have made changes? From the very learned speech of Mr. Subba Aiyar to which I have listened with great pleasure, I am not satisfied that a change of the kind proposed by him is necessary in the Civil Procedure Code at present. I am of opinion with Mr. G. Paramesvaran Pillai that the learned mover be requested by this Council to redraft the Bill in the ordinary form without the innovation of Orders and Rules, *i. e.*, on the old lines with necessary changes to suit the requirements of our country.

With regard to the question of interest I am also of opinion that the Civil Procedure Code should be the last place in our Statute Book for any provision relating to interest or other substantive law. I am at one with my friends on this side of the House that the beneficent provisions of the Regulations of 1010 should not be disturbed at all in the manner proposed by the Law Member, because it will be a calamity to the agricultural prosperity of this state, and as a representative of the agricultural population of the constituency which I have the honor to represent, I must strongly oppose the introduction of the provision enhancing the rate of interest to 18 per cent.

MR. K. C. RAJA RAJA VARMA: Sir, in preparing the present Bill, the learned mover has closely followed the British Indian enactment on the subject. He proposes to give more discretionary powers to the judiciary in the administration of justice. He has thoroughly recast both the form and the contents of the Code and has made most important changes in many of its provisions. He has divided the body of the Code into two parts, one containing general principles of procedure and matters of policy and administration, and the other dealing with mere "details of machinery" which are necessary for the carrying out of the principles. In adopting this mode of arrangement, I am afraid that the learned mover has too closely followed the British Indian arrangement. Many provisions which define the general rights and duties of parties, and prescribe principles of procedure to be followed by the courts, have not been embodied in the first part of the Bill, but have been relegated to the region of Orders and Rules which deal only with mere matters of detail. If

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a person has got a civil right against another; and if he wishes to enforce it through the courts or to get damages for any injury he has suffered, he may present a plaint before a competent court for the redress of his grievance. The learned mover concedes this to be a general principle of procedure and makes provision for it in clause 24 in the first part of the Bill. But the defendant's right to put in a written statement of his defence or to plead a set off against the plaintiffs' claims also relates to general principles of procedure, and forms equally with the plaint the basis of the suit upon which the court has to proceed with the trial and pronounce a decision. In the settlement of issues and in the various stages of the progress of the suit there are general principles of procedure and matters of policy to be followed by the courts. If this Bill is to be consistent with the principles under which it is said to have been prepared, then I submit that many of the provisions which are now embodied in the Orders will have to be removed thence and inserted in the more important portion of the Code.

The proposed arrangement of the Code into Sections and Orders is itself attended with serious inconvenience. The virtue which is claimed for it that it is on the model of the British Indian enactment and hence would facilitate references to authorities does not even now exist. Most of the numbers of the Sections and Rules in the Bill do not tally with the corresponding provisions of the British Indian Code; and if all the provisions dealing with general principles were inserted in appropriate places among the Sections, then the Bill would become still more different from the British Indian Act. Moreover, in British India, the present arrangement is necessitated by the existence of a number of Provinces which have different High Courts and where, owing to the divergence of local laws and the customs and manners of the people, the details of the machinery of judicial administration may have to be adjusted to suit the varying needs of different localities.

Sir, this Bill introduces most important changes in the existing law of procedure in the country. Though many of these changes have been introduced with a view to make the Code conform to the pronouncements of the judiciary both here and in British India, there are some new provisions in the Bill which have nothing to do with the law of procedure. One of such provisions is clause 31 (1) of the Bill. The learned mover tries not only to define the whole of the law of interest obtaining in the country within the compass of a single Section, but also to introduce most important changes therein, probably to obviate the necessity of passing a separate Regulation for the same. I object most emphatically to this method of tacking in most important legislative measures to enactments which have no special connection with them. I hope the learned mover will agree with me in holding that the law of interest forms part of the substantive law of the country, that it has no special affinity to the law of procedure, and that it may not be desirable to

mix the one thing up with the other. The law of interest deserves separate treatment at the hands of the legislature.

The importance of the changes proposed by my learned friend will be realised only when we compare the provisions contained in the Bill with the existing law of interest. There are three great changes introduced in the Bill, all of which have got the effect of making the debtor the helpless prey of the creditor. The Bill proposes firstly to raise the maximum rate of interest from 12 per cent. to 18 per cent. per annum, secondly to increase the amount adjudged as interest for the period anterior to the suit from half the principal to the principal amount, and thirdly also to provide for the payment of compound interest at rates not exceeding 18 per cent. per annum to bankers. All these provisions are to the immense advantage of creditors. By the side of these, does one find any provision tending to give protection to the debtors from the relentless hands of the creditors? No. The proposed reduction of two per cent. in the interest on paddy loans is quite inadequate for benefiting the debtors. These amendments are, I submit, one-sided and they ought not to be accepted by this House. The principal argument advanced by the learned mover is that the provisions regarding payment of interest were passed nearly a century ago and have been the subject of adverse criticism at the hands of laymen, merchants and lawyers alike. The very fact that it has stood well the test of a century without even being attacked very often, and that the one attempt to amend the law ended in complete failure in the near past, is sufficient proof of the soundness of the existing law.

Sir, there is another aspect of this subject of interest to be considered. When we consider the law of interest, we are dealing with the legal relationship existing between a comparatively small class of creditors and the rest of society; for we know that the creditor class is exceedingly small in comparison with the debtor class. Neither laymen, nor merchants have anything to gain by the enhancement of rates of interest or by the provision for payment of compound interest. It is the small class of money-lenders alone who are benefited by the proposed changes; while the merchants and the agricultural and artisan classes are only prejudiced by being forced to pay any amount as interest for the loans they have to get and are therefore placed under these circumstances entirely at the mercy of money-lenders. It does not seem to me to be expedient on the part of the legislature to assent to measures which bring decided advantages to one side, without considering exhaustively the possibilities of giving protection to the other side against the aggressions of the former. It may be argued that if complete freedom of contract were allowed between the parties, the debtors would choose the cheapest source of money available and the competition between rival money-lenders would reduce the rate of interest. But the real facts are that they are masters of the situation, and that they, being very few in a locality, join together and raise the interest as high as possible. The hope that if the law allows these people higher rates of interest and

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other advantages, they will refrain from taking discounts and other illegal gains is not justified under the circumstances in which creditors and debtors are placed. Moreover, the proposed changes, if accepted by this House, will pave the way for most important economic changes. The increase in the rate of interest, the provision for payment of compound interest and other advantages given to the creditors will surely tend to promote a class of greedy money-lenders in all places in the country, whose activities will have the effect of enslaving large sections of the population. If the indebtedness of the agricultural and artisan classes is not so great in Travancore as elsewhere, if they are free to any extent from the oppression of money-lenders, it is due mainly to the humane and beneficent provisions of the Regulations of 1010. It would be cutting at the root of agricultural and industrial prosperity and contentment if this House were to adopt the principles underlying the proposed provisions.

In this connection I may point out that there is one real disadvantage under which the creditors now labour in the realisation of their debts. As the law stands at present, they may realise any sum as interest only up to half the principal amount for the whole period prior to the date of the decree. If interest up to half the principal amount or any sum exceeding that accumulates at the date of the suit, and if the defendant only chooses to protract the progress of the suit or to contest the suit through all the courts, the creditors will be put to very great loss. I submit that the defendant should not be allowed to take undue advantage of this defect in the law, but that provision should be made enabling the courts to award any sum not exceeding half the principal amount as interest in money suits and the principal amount in suits for grain for the period anterior to the date of the suit and the whole of the interest accruing thereafter.

MR. K. PARAMESVARAN PILLAI: Sir, very serious objections have been taken by my learned friends on this side of the House to the rearrangement of the Sections of the Civil Procedure Code in the manner it has been done in the Civil Procedure Code Amendment Bill. It appears to me that, before such a radical change is made in the arrangement of the Code, a good case should be made out for it; but from what I have been able to gather from the Statement of Objects and Reasons published by the mover of the Bill and from the speech made by him in this Council in support of the motion, I must confess that I have not been satisfied that a case has been made out for the proposed change.

The grounds upon which Mr. Subba Aiyar has proposed to rearrange this Code are (1) that it has been done in British India, (2) that it facilitates reference to British Indian precedents, and (3) that it provides for a simpler machinery for the purpose of making changes in matters of mere procedure. The fact that such rearrangement has been made in British

India is absolutely no reason why it should be followed here. I admit that it might facilitate reference to the British Indian and English precedents, if the Code is drafted on the same lines as those of the British Indian Code. The advantages of such a rearrangement, in my opinion, are far outweighed by the disadvantages arising from the difficulty of reference to the ordinary provisions of the Code itself. Both lawyers and laymen who are interested in the subject are now well acquainted with the provisions of the Code, so much so that many lawyers can quote even the numbers of several of its most important Sections. The proposed amendment is likely, therefore, to lead to great confusion and trouble and the advantages sought to be achieved are very much less than the disadvantages accruing from the new rearrangement. In regard to the new machinery proposed to be introduced for altering the procedure law of the country, I must say that, in order that it may be accepted, good reason must be shown for thus delegating the function of this Council to a private body which need not be responsive to public opinion. This was resorted to in British India, as has been pointed out under the very peculiar circumstances existing there, but which do not exist here. One could understand a demand for simplification of the machinery if the Civil Procedure Code was one which stood in need of constant and sometimes urgent amendments and the very cumbrous machinery of the Legislative Council could not be adjusted to meet the needs of this machinery. But the Law Member has told us that, though this law has been in the Statute Book for the last 30 years, the changes sought to be introduced into it are so few and so trifling that the creation of another machinery for effecting them seems to be altogether superfluous and unnecessary. These modifications can very well wait for the pronouncement of the legislature itself. To delegate this power to a committee consisting of High Court Judges and High Court Vakils might lead to grave inconvenience. Those who administer the laws should not also make laws. On these grounds, therefore, I submit that no case has been made out by my learned friend for the rearrangement of the Code as has been done in the Bill.

Now, coming to the most controversial Section of the Code, viz., Section 31, I must emphatically protest against introducing a substantive law into a Code which merely prescribes the procedure to be followed in courts of law. Various disadvantages resulting from such a procedure are apparent and I should also say that my learned friend is entirely out of order in doing so. As has been pointed out, if it had taken the shape of a repealing enactment, the expression of public opinion against it would have been so strong that it would have been impossible for the Government even to bring forward such a measure. Now, that task is sought to be incorporated into the Civil Procedure Code. I do not know if even all lawyers have known that such a provision for repealing the Interest Regulations of 1010 is contained in the amending Bill. There are several reasons for opposing the amendment. In the first place, in order to change the law of interest, which is likely to have a far-reaching effect, some public demand must

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be felt. Although the Popular Assembly has been in existence for the last 18 years, excepting for a representation made in a single year by a hundi merchant, no member of the Assembly ever made any request for repealing the Interest Regulations of 1010. The Law Member referred to some representations in the Assembly. But the Council will have noticed that all those representations had reference to interest accruing between the date of suit and the date of decree. In order to bring this fact forcibly to the notice of the Council I interrogated the Law Member when he referred to the proceedings of the Assembly and he had to admit it. It is also noteworthy that on a former occasion when an attempt was made by the Government to repeal the Interest Act the non-official members made such a vigorous protest and they had such a strong public opinion behind them that, in spite of the Council then possessing an official majority, the Government had to yield. In view of all these, it appears to me extremely unfair on the part of the Government to bring forward a measure for the purpose of repealing a beneficent enactment, and in the form in which it has been sought to be brought forward. It is the irony of fate that the State should champion the cause of the usurer rather than of his victim. Much has been said about freedom of contract, and, as my learned friend, Mr. Velu Pillai, has rightly pointed out, there is not much charm in that expression. All civilised Governments have sought to interfere with it whenever the interest of the State as a whole required it. I have only to point to the labour laws enacted by the various civilised States, the Punjab Land Alienation Act whereby alienation of agricultural land to non-agriculturists is prohibited, and the Rent Regulation Acts of municipalities like Bombay as instances of such encroachments on the so-called freedom of contract.

Now, my learned friend also curiously enough appealed to justice. Let us see whether justice is on the side of the lender or of the borrower. What is interest? Interest, as I understand it, is merely the compensation which the owner of capital is entitled to receive for its use. Now, could he demand anything more than the return the capital would bring in if it was invested in reproductive work? Money is ordinarily borrowed to feed agriculture or industry. So far as agriculture is concerned, everybody will admit that it never pays more than three or four per cent. on the capital investment. In regard to industry, I am yet to know, in Travancore, any industrial concern which pays more than 12 per cent. dividend. There may have been some Companies which have sometimes paid more than 12 per cent. for a year or two. But taking the average dividends declared for the last twelve years, it will be difficult to see whether there has been any business which has paid even 12 per cent. Where is then the justice for enabling a usurer to realise more than 12 per cent. interest? So, from whatever standpoint we look at it, there can be no doubt that there is no reason to repeal these beneficent Regulations of 1010 which have worked so

remarkably well for nearly a century. So from the standpoint of justice, I should consider that justice is on the side of the borrower and not on the side of the lender. It may be an old Regulation. There are very many old things which are quite useful and there is no reason why a thing which is old should be cast away because it is old. That it is old is the very best argument for retaining it in the Statute Book rather than throwing it away. For these reasons, I object to the principle of the Bill, the principle consisting mainly in the rearrangement of the Sections of the Code and the interpolation into the Bill of a provision in regard to interest.

MR. DOMINIC TOMMAN: Sir, I am sorry I cannot support the principle of the Civil Procedure Code Amendment Bill just now placed before the Council by the learned Law Member. I am especially sorry that I have to oppose this Bill, on the preparation of which, as I understand, a great deal of labour and money has been expended.

The Procedure Code, in its existing form, has been regulating the course of work in the civil courts for the last 33 years. I do not think that there is any other Code in the Statute Book of Travancore which has been working more satisfactorily than this piece of enactment. Judges, Munsiffs, vakils and the litigant public will all agree that the proposed overhauling and rearrangement will create an amount of needless confusion, which will require several years to get over. I do not find a corresponding substantial good in the present amendment. The fact that the British Indian legislature adopted this form of amendment, so long ago as 1908, is no reason why we should imitate them in that respect. They had a pressing necessity for it. For, it was found by experience that the same details of procedure would not suit all the various Provinces and Presidencies of India, which in certain respects differed from one another. The scheme of the new British Indian Code is to reserve, to the Imperial legislature, those general matters in which a uniformity of procedure throughout the whole of India is advisable, and to leave to the chartered High Courts and Chief Courts, the power of annulling and altering those rules of procedure which dealt with details. The delay that necessarily happened in carrying a Bill through the Imperial Legislative Council was also another reason for the delegation of power to the High Courts and Chief Courts. In Travancore neither of these reasons exists. We require only a uniform Code for the whole State. Our Council moreover is not so heavily saddled with legislative work that any amendment deemed necessary could not be carried through within a very short period. If the co-operation of the High Court is deemed necessary, their view in the matter of any amendment may easily be consulted. Another argument advanced in favour of the amendment seems to be that the present arrangement is not very scientific. It is not clear how the arrangement of the Bill is more scientific than that of the present Code. The whole Code relates to procedure law. If some provisions are considered more akin to substantive law than others and a classification is based on that

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consideration, the difficulty will be where to draw the dividing line. There is no marked distinction, as is supposed between the Sections and the Rules of the Bill, and if one is desirous of finding distinction, such may be found even among the Sections and Rules themselves. No difficulty, at any rate, has ever been felt in the practical working of the Code on the score of this unscientific arrangement, and none will ever be felt.

I have also to take objection to Section 31 of the Bill. The people of this land, who are chiefly agriculturists, have little money to spare and are most of them borrowers. Cultivation itself is chiefly done on borrowed capital. Where money is scarce and the demand is great, the borrowers are always at the mercy of the lenders, and are prepared to submit, though unwillingly, to the terms dictated by the lenders. Till now 12 per cent. was considered the normal rate. Though subterfuges were discovered to realise higher rates, the idea that 12 per cent. was the normal rate operated as a great check on lenders in fixing more stringent terms. The effect of the proposed alteration in the law will be immediately to treat interest at 18 per cent. and compound interest as normal. The lenders will hereafter be looking for still higher rates, and having recourse to all the subterfuges that they have been practising till now to compass their end. It is true that in more civilised countries a great deal of freedom of contract in these respects is allowed. But it has to be remembered that the general rates of interest prevailing there are considerably lower than the rates obtaining here.

The judgment of the High Court referred to in the Statement of Objects and Reasons seems really to work injustice in certain cases. I think that, once a suit for money has been filed, interest at the rate of 6 per cent. may be allowed from the date of suit to the date of realisation without any limit; otherwise, we shall be giving an impetus to all sorts of fraudulent delay in the matter of litigation.

I have, however, to observe that the Civil Procedure Code is not the place where this matter should be provided for. This should not especially be interpolated into this Bill, one of its objects being to make the arrangement more scientific.

MR. C. P. KOCHUKUNJU PILLAI: Sir, I also oppose the Bill in certain respects. My first objection relates to the form in which the Bill is drafted. Mr. Subba Aiyar himself admits that the form now adopted is a complicated one. What that complication is and what the difficulties arising out of that complication are, I shall presently mention. We have got now a Civil Procedure Code dealing with the law Section by Section. We have got also a series of High Court decisions in so many volumes. These decisions are based on the several Sections of our present Code. Again we have got a Civil Procedure Code as adopted in British Indian Courts to refer to. We have got also commentaries on the various Sections of that Code. We have got what are called such provisions as Rules and Orders. We have got so many decisions of

the British Indian Courts also to be followed along with that Code. Beyond all these, we shall have to deal with another containing certain Sections and also provisions regarding Rules and Orders. Let us now see what the nature of the work will be for a vakil dealing with a case in court. He will have first to make a reference to the Code dealing with the law, Section by Section, Order by Order and Rule by Rule and then make a reference to our existing Code, Section by Section. Then he has to make a reference to the decisions based on these Sections and then may go in for reference to the British Indian Code to see the corresponding Section of the British Indian Act. Then he has got to make a reference to the commentaries, Order provisions and all that. Further, the Sections in our Code do not tally with those in the other Code. So also the provisions in respect of Rules and Orders. So a vakil or any man who is dealing with this in court has to make a reference to so many books that already exist and, along with them, the present Code. From this it is evident that a lot of unnecessary additional work devolves upon the vakil. So I think it is better to retain our present Code. Mr. Subba Aiyar has mentioned two sets of persons who would easily follow the proposed Code. The first set of men he mentioned were some of the leading vakils of our courts. I admit that. But I might say that it is some of those vakils who have expressed their opinion now. Others are probably waiting for their turn to oppose the Bill. The other set of people for whom Mr. Subba Aiyar says it is easy to follow the new Code are those who have yet to join the bar.

MR. V. SUBBA AIYAR: I did not say "yet to join the bar." I said "beginners."

MR. C. P. KOCHUKUNJU PILLAI: I have to say here that there is another set of men—I mean vakils who do not come under the category of leading vakils and also who do not belong to the set of persons who have yet to join the Bar. They are very large in number. That there are many vakils under this head we all know. We cannot say that the number of leading vakils is larger than that of these other vakils. On the other hand, they are far smaller in number than the other vakils. So, Mr. Subba Aiyar's explanation that the Code, as it is now framed, can be easily followed by these two sets of men cannot carry conviction. Now, as it is admitted on all hands that the Code, as it is presented, is not unobjectionable and as persons who, Mr. Subba Aiyar said, would easily follow it have given their opinion that it is difficult for them to follow, I think it is better to allow us to follow the existing Code, i.e., Section by Section, and then follow our High Court decisions which are based upon the existing Code.

Then with regard to the rate of interest mentioned in the Code. MR. Subba Aiyar said that I was one of those who represented it at the last session of the Assembly. I may tell the House that the representation which I made at the last session of the Assembly was regarding the interest awardable after decree.

MR. V. SUBBA AIYAR: That was all that I said.

[Mr. S. Krishna Aiyar.]

MR. C. P. KOCHUKUNJU PILLAI: I had my own opinion and I expressed it. As regards the rate of interest awardable before the date of decree, I cannot agree with my friend, Mr. Subba Aiyar. I fully agree with my learned friends on this side who have spoken just now on that question. Increasing the rate of interest is not desirable, because if we allow this provision to be introduced it will vitally affect the agricultural population of this country. My friends on this side who have already spoken on this question have already dwelt upon it sufficiently, and I, therefore, do not think that I should dilate on the point any further.

Finally, I should request Mr. Subba Aiyar to allow us to follow the existing Code. If necessary, he may make the necessary changes in the Sections themselves.

MR. S. KRISHNA AIYAR: Sir, this unfortunate piece of legislation has met with wholesale condemnation in this House to-day, and I should regret very much to have to add to it and would not have stood up but for wireless messages communicated to me from all sides of the House. It has been already observed that this Code has been working satisfactorily for the past 30 years and more. This Code is modelled on the earlier Civil Procedure Code of 1037. That Code followed the British Indian Act of 1859. The objection—the greater objection—raised to this legislation at present seems to be the wholesale recasting of the Sections of the Code into Sections, Orders and Rules. The reasons that weighed in British India for recasting the Code there have been dealt with at length by several members of this House, and I do not propose to add anything to it. One fundamental principle of legislation is that there should be a need, a justifying necessity, for every new enactment. Legislation is not a piece of luxury. It is not like ballast. It is not to be indulged in as an ornament, or say legislation for legislation's sake. Every piece of legislation must be intended to serve a specific object. In the present instance, the learned mover himself has testified to the satisfactory working of this Code for the past 30 years and more. However, like the seasoned lawyer he is, he puts it on a very "broad standpoint." But, we here need not consider the question from any narrow standpoint. From the necessary standpoint, Mr. Subba Aiyar himself has set the hall-mark of his approval.

The main reason that seems to have weighed with him was to bring the present Code into line with the British Indian enactment. The advantages are very few, and, if anything, it might be only to afford facility to practitioners or to others from outside, to practise or fill places in Travancore. (*Laughter.*) So far as the Rule Committee is concerned, it appears to be a very cumbrous piece of machinery. What was wanted in British India was facility, easiness, and adaptability, so that each High Court might be allowed to suit itself to altering conditions. But, over here, a committee has to sit and make rules and submit them to the High Court. The High Court itself has to submit a report to the Government and the Government has to set its final seal of approbation

upon it. This Rule Committee seems to be so restricted in composition and character as to be no better in any way than the High Court Committee that has been sitting for a number of months now to evolve Rules of Practice for the guidance of subordinate courts.

The one safeguard of legislation is publicity---opportunity for public criticism. A Rule Committee of the kind that has been put forward in the present instance lacks this essential character. If, then, we look at this Bill from any standpoint, I cannot find any adequate need, still less any justifying necessity. It has been observed by many of the speakers, and the learned mover has also contributed to it to a great extent, that the new Code might affect the lawyers at present in practice and the lawyers yet to begin practice. A veiled threat is held out that the lawyer in full practice or the elderly lawyer might be relegated as a back-number, if he is unable to unlearn what he has learnt and to relearn the new enactment. As to young practitioners, it was observed, that, with their intelligence and adaptability, they ought to be able without difficulty to suit themselves to the changing laws, whatever these may be. The view-point thus far has been that this Bill is intended more for lawyers than the general public. Whatever difficulties or hardships the lawyer might meet in adjusting himself to this new law, that must be entirely ignored. It is the interest of the public that we have to take into consideration. The public have grown familiar with the Sections of the existing Code and the very numbers of the Sections to such an extent that the numbers themselves have acquired a fixity of significance due to long association. When we fill the Statute Book with wholesale technicalities, the ordinary man has to take expert advice at every step, and that means that litigation becomes costly and ruinous. Howsoever it may be advantageous to practitioners—and I am one of that body—whatever our professional or individual interests may be, we have to subordinate them to the interests of the general public.

One question which was discussed at great length was the new Section on interest. Here there has been some misconception as regards the existing law. The existing law allows enforcement of compound interest where there is specific provision in the contract between the parties. This part of the Bill is nothing new. Coming to the subject of freedom of contract, appealed to as the basis of the Section, it has to be observed that the freedom which the learned mover would give to the general public is not absolute freedom, but a restrained, limited freedom or a sort of shackled freedom. He would go up to 18 per cent. and say "thus far and no further."

MR. V. SUBBA AIYAR: I have not said that freedom of contract should not be observed.

MR. S. KRISHNA AIYAR: In countries where the principle of freedom of contract is accepted the judiciary always interposes an effective check against usurious rates of interest.

Coming to the tirade against bankers and their ways, let me say that capital is necessary for development, and capital must be allowed to move

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freely. Whatever that may be, the sense of this Council seems to be that in this matter Travancore is not advanced enough to be free, but must be in fetters.

MR. JOSEPH PANJIKARAN: I wish to know whether Mr. Krishna Aiyar is giving his opinion or the sense of the Council.

DEPUTY PRESIDENT: That is his view.

MR. T. K. VELU PILLAI: I wish to know from Mr. Krishna Aiyar whether the existing law has prevented the movement of capital in the country and whether the debts contracted in 1897 were less than in 1896, whether the movement of capital now is less than it was, and whether he has got figures.

MR. S. KRISHNA AIYAR: I am not prepared to give figures at present.

MR. T. K. VELU PILLAI: May I have a statement from him?

DEPUTY PRESIDENT: You may allow him freedom of discussion, Mr. Velu Pillai.

MR. S. KRISHNA AIYAR: The matter has been discussed in all its bearings and I do not propose to add anything to what I have already said. Let me conclude by saying that I am against the wholesale and radical recasting of the Civil Procedure Code into the proposed system of Sections, Rules and Orders.

MR. P. K. NARAYANA PILLAI: Sir, when this Bill was introduced into the Council, and the learned mover moved for reading it in Council, I was under the impression that this Bill was but another instance of the imitative activity of the Legislative Section of the Government of Travancore. But the learned mover has told us that it is not to be viewed in that light, and that the real reason underlying the present Bill is one of 'easy reference', as he puts it. I am very sorry that I cannot share that view of the learned mover. First of all, by the introduction of this Bill, reference is made one degree at least further complicated. For, we have our present Civil Procedure Code, the old British Indian Civil Procedure Code, the current Civil Procedure Code in British India, consisting of Orders and Rules, and our Civil Procedure Code now in contemplation. All these four will have to be referred to and assorted along with judicial decisions before a person gets ready to argue a question arising under the Civil Procedure Code. Without this proposed legislation, the question of reference will be easy to the extent that it may at least be excluded. So, on this ground, the present Bill cannot be justified.

Then, what the learned mover has done is that he has treated the Civil Procedure Code in Travancore just as if it were a multivertibrate. He has extracted all the skeleton Sections from the body of the Code leaving aside the flesh and other softer things. All this bony matter has been constituted into 125 Sections, and the rest, the softer substance, has been separated and arranged to be dealt with by the High Court of

Travancore. That is what he has done. I may put it in another form. The steel frame of the Civil Procedure Code has been selected and the other parts of the work, separated from the steel frame which have been made into the Sections of the Procedure Code, have been removed into Orders and Rules for the manipulation of a standing Rule Committee to be appointed under the Code. Such an arrangement, a vivisection as it were, of the Civil Procedure Code, necessarily involves one thing. This Legislative Council which has been recently constituted is practically asked by this sort of grouping to yield its rights over a major portion of the Civil Procedure Code.

The Civil Procedure Code, as it now exists, contains about 600 Sections. About 100 Sections of it are separately removed, and regarding the rest, say, nearly 500 Sections, this Council is asked to give up or to surrender its right of legislation. Whatever be the advantage that may result from the Rule Committee, in view of the existing right of this Council, I am loth to surrender the privilege that is now vested in it. So, I am sorry I have to oppose that portion of the Bill where the learned member contemplates a standing Rule Committee to the exclusion of the Legislative Council. The analogy of what obtains in British India will not hold good in the present instance. The British Indian Civil Procedure Code had to be dealt with by four or five chartered High Courts, as well as a few Chief Courts, and they found it rather difficult to work the Code owing to conflicting decisions and dissimilar environments, so much so that the Viceregal Council had to interfere to restore harmony and continuity of procedure in the different High Courts and Chief Courts. They were asked, each of them, to exercise revision over particular portions of the Civil Procedure Code by enacting Orders and Rules. That question cannot arise in Travancore at all. Referring to the prior Civil Procedure Code which was repealed in British India, we shall find a bewildering divergence of decisions regarding the same Section. Such a contingency has not arisen in Travancore. No doubt, we have our own difficulties, in that the subsequent decisions of our High Court do not occasionally take note of prior pronouncements. But that is not so serious as to revolutionise the Civil Procedure Code. Generally speaking, the decisions have been more or less uniform regarding the procedure law in the High Court of Travancore. To invest the High Court with a power of legislation over a major portion of Civil Procedure Code is a piece of questionable wisdom. The High Court Judges are concerned with the speedy despatch of business in the courts. The poor man, the day-labourer, the trader, the farmer and a variety of other people whom the shoe really pinches know too well the difficulty they experience in the courts to be denied a voice in shaping the procedure law. Thus, with respect to the Rule Committee I am clearly of opinion that five-sixth of the power now vested in the Council to enact and regulate the Civil Procedure Code cannot be entrusted to them.

Then, there are other provisions also, My friend, the learned mover of the Bill, seems to have adopted certain Sections of the British

[Mr. P. K. Narayana Pillai.]

Indian Civil Procedure Code, which I would characterise as retrograde in tone. So far as we are concerned, for example, with respect to the position of the certified auction purchaser, a suit to be filed against him is now controlled by Section 314. That debars a suit only against the certified purchaser, and so, as the property passes from him, the bar is removed. The recent British Indian enactment has widened the protection granted to the certified purchaser, in that Section 66 of that Code precludes suits against persons who claim the property from an auction purchaser. (See also 24 C. W. N., page 1011.) That is ousting the jurisdiction of a civil court. That, I consider, is a retrograde step. Ouster of the jurisdiction of a civil court under the Civil Procedure Code or any other enactment, I would always consider a retrograde step, and it certainly has to be deprecated. Passing further, I see that my friend, Mr. Subba Aiyar, is, to some extent, unchivalrous also. For, with respect to suits to be instituted by women, he says that if it is proved that they have no immovable property in Travancore, they may be asked to furnish security for the costs of the suit, and if they fail to produce such security, their suits may be dismissed. The reason alleged therefor is that women cannot be arrested in execution of a decree. I say that the same reason will apply with respect to males also, if it is proved that they have no property. If I am unable to make out that a male litigant possesses no movable or immovable property, why not his suit be dismissed? What does incarceration in any jail mean to such a man? He has simply to move a petition before an insolvency court to get his discharge. Hence, I have to oppose the Bill in that respect also.

Then, there are other provisions, all requiring revision and reconsideration. If the Bill goes into the Select Committee, there the whole thing may be discussed.

The next question which has been pointedly discussed is the question of interest. That is a question of substantive law. If British Indian precedents are to be followed, as they are being followed in other instances, I would point out that the question of interest there is one of substantive law covered by the Interest Act. Here in 1010 the then legislators in their wisdom thought that there was a necessity for a sort of Interest Act and they enacted two acts, portions of which now survive. In 1037, the Civil Procedure Code was enacted in this State, and then it was not thought necessary to repeal those interest provisions. Again in 1065, the Procedure Code was re-enacted and then too it was not thought fit to interfere with the Interest Regulations. In 1086, again, the Civil Procedure Code was amended and then too, the interest enactments were safe enough. Eleven years ago, there was a further attempt to get rid of the Interest Regulations, which proved futile. The objection that has been raised against the Interest Regulations is that they are old. I beg to submit that, because a thing happens to be old it does

not deserve to be got out of the way. On the other hand, it shows for how long it has maintained the ground and how deep-rooted the Interest Regulations have become in Travancore. It is not in 1910 alone that the legislature thought of fixing the rate of interest. I would refer, for example, to a number of other Regulations on the subject. We have the Revenue Recovery Regulation of 1068 which provides 6 per cent. interest on arrears of revenue. There is the Agricultural Loans Regulation of 1094, which is a very recent thing. One of the rules says that 4 per cent. is the normal rate of interest to be recovered from the borrower. Then, there is the Negotiable Instruments Regulation, Section 82 of which says that if no rate of interest is specified, 6 per cent. may be recovered. My friend, Mr. Subba Aiyar, drew attention to the Jenmi and Kudiyan Regulation. That is a misleading Regulation, for with respect to money, on a reference to Section 17—

MR. V. SUBBA AIYAR: I refer only to the case of paddy.

MR. P. K. NARAYANA PILLAI: With respect to paddy, it provides 18 per cent. and my own impression is that the legislature has got into some confusion there. Usually, the interest as regards paddy varies from 1 to 2 per 10 yearly. The Jenmi and Kudiyan Regulation seems to have adopted a middle course, but instead of fixing the rate at 15 per cent. it fixed the rate at 18 per cent. confounding the interest on paddy with the interest of 12 per cent. on money. It is this that has been brought up to support the present provision in the Civil Procedure Code. That, after all, is one poor link in a series of Regulations to justify the contention that has been put forward.

There is then the question with respect to the exploitation of capital in the State. I raise the question whether the ordinary agriculturists, farmers and ryots, in the State are able to reap more than 12 per cent. upon borrowed capital. That is the question to be considered by the Council. It is said that there was some sort of suggestion from traders and such gentlemen as S. M. P. A. members, that the interest might be enhanced. If traders think they can realise more than 12 per cent., let them, by all means, pay more than 12 per cent. interest. We find that for ordinary deposits, hundi merchants generally give only 7½ per cent. It is, after all, not a glorious rate, and many of them—I mean these hundi firms—collapse, causing discomfiture to the depositors and consternation to the whole State. Such being the case, their cry that there must be a further advance is certainly selfish.

DEPUTY PRESIDENT: Your time is up.

MR. P. K. NARAYANA PILLAI: In conclusion, I would submit that I am not particular about the form in which the Civil Procedure Code is cast. I am not so very old as some of my friends are and I hope to pick up the new Code. But the important thing is that it should not be made retrograde. If the Rule Committee is knocked on the head and if it is agreed to remove the retrograde provisions, I shall support the Bill, but not otherwise.

[Mr. V. Kunjukrishna Pillai.]

DEPUTY PRESIDENT: We may now rise for lunch. I beg to announce the result of the ballots in respect of the several committees held yesterday.

I. Sri Mulam Popular Assembly Committee—5 Members.

- (1) Mr. G. Paramesvaran Pillai.
- (2) „ K. Paramesvaran Pillai.
- (3) „ T. Kumara Pillai.
- (4) „ N. Kumaran.
- (5) „ A. Govinda Menon.

II. Government Press Committee—3 Members.

- (1) Mr. K. P. Raman Pillai.
- (2) „ M. N. Pillai.
- (3) „ M. R. Madhava Variar.

III. College Accommodation Committee—5 Members.

- (1) Mr. T. K. Velu Pillai.
- (2) „ K. C. Raja Raja Varma.
- (3) „ G. Paramesvaran Pillai.
- (4) „ S. Adam Sait.
- (5) „ N. Padmanabha Pillai.

IV. Educational Scholarships Committee—5 Members.

- (1) Mr. Joseph Panjikaran.
- (2) „ S. Krishna Aiyar.
- (3) „ G. Paramesvaran Pillai.
- (4) „ P. K. Narayana Pillai.
- (5) „ C. P. Kochukunju Pillai.

The Council rose for lunch at 2-30 p. m.

The Council met again at 3 p. m.

MR. V. KUNJUKRISHNA PILLAI: Sir, I also wish to make a few observations regarding the Civil Procedure Code Amendment Bill. As a vakil I must tell the House that I have a close acquaintance with the present Civil Procedure Code for a period of 20 years and more. I am of opinion that the amending Bill before us is not of much use and I condemn it in its present form. As to the rate of interest contemplated by the Bill—I must say it is very hard to the money-borrowing public. The Section helps usurers and money-lenders. There is a proverb saying “money-lenders are mischief-makers” and I will say money-borrowers as well. Mr. Subba Aiyar has said that the Jenmi and Kudiyan Regulation provides 18 per cent. rate of interest. My learned friend, Mr. P. K. Narayana Pillai, on this side of the House has also said that the rate of interest for paddy is 18 per cent. May I tell the House that the Jenmi and Kudiyan Regulation provides the rate of interest on dues to jenmies (in kind), i. e., such cesses as paddy, coconuts, plantain fruits, plantain leaves, etc. So, that argument of Mr. Subba Aiyar also falls to the ground. Lastly, as to the Rule Committee, we do not want it, because the opinion of two higher grade vakils and two judges would not suffice. With these remarks I oppose the motion.

MR. T. KUMARA PILLAI: സിവിൽ കോട് റഗുലേഷൻ ബില്ലിൽ നിശ്ചയിച്ചിട്ടുള്ള റൂൾ കമ്മിറ്റിയേയും, കൂട്ടിവെച്ചിട്ടുള്ള പരിശരണേയും പറ്റി ബലമായി എതിർക്കാതിരിപ്പാൻ എന്റെ മനസ്സ് അനുവദിക്കുന്നില്ല. ഒരു നിയമത്തിൽ ഭേദഗതിയോ നൂതനമായ ഒരു നിയമമോ ഉണ്ടാക്കേണ്ടത് അതിലേക്കു ആവശ്യപ്പെടുമ്പോൾ മാത്രമാണ്. നിയമങ്ങളും അതിലെ ഭേദഗതികളും ഉണ്ടാക്കിവെച്ചതിൽ പിന്നീട് അതിനെ സ്വീകരിക്കുന്നതിനായി ജനങ്ങളെ തയ്യാറാക്കേണ്ട ആവശ്യമില്ലാത്തതാണ്. നിയമമുണ്ടാക്കുകയും അതു നടത്തുകയും ചെയ്യുന്ന ജോലി ഒരാളിൽ സമർപ്പിക്കുന്നതു നിയമതത്വങ്ങൾക്കു യോജിക്കുമെന്നു തോന്നുന്നില്ല. നിയമനിർമ്മാണസഭയിൽ പാസ്സായി വരുന്ന റഗുലേഷനുകളിലുള്ള പല വകുപ്പുകളും അടിസ്ഥാനമാക്കി ഗവണ്മെന്റിൽ നിന്നും അപ്പോഴപ്പോൾ യോജിക്കുന്ന മാതിരി ഉണ്ടാക്കുന്നതായ റൂളുകൾ പല അവസരങ്ങളിലും ജനങ്ങൾക്കു വലുതായ സങ്കടങ്ങളെ ഉണ്ടാക്കുന്നുണ്ട്. നിയമസഭയിൽ പാസ്സാക്കുന്ന റഗുലേഷൻസ് വായിച്ചു നോക്കിയത് ജനങ്ങൾക്കു വലുതായ സങ്കടങ്ങൾക്ക് അവകാശമില്ലെന്നു തോന്നിപ്പോകുമെങ്കിലും, അതിന്റെ ഫലമായി ഉണ്ടാക്കുന്ന റൂളുകൾ ജനങ്ങൾക്ക് അമിതമായ സങ്കടങ്ങൾക്കു കാരണമായിട്ടുള്ള ദുഷ്ഘാതങ്ങൾ അപൂർവ്വമായിട്ടല്ല കണ്ടുവരുന്നതു. ഇങ്ങനെ വരുന്ന എല്ലാ അവസരങ്ങളിലും ജനങ്ങൾക്കു ന്യായമായ രക്ഷ കിട്ടിവരുന്നതു സിവിൽ കോടതികളിൽ നിന്നുമാണ്. നിയമസഭയാലും ഗവണ്മെന്റിനാലും ഉണ്ടാക്കപ്പെടുന്ന നിയമങ്ങളും റൂളുകളും പ്രവൃത്തിയിൽ എത്തുമ്പോൾ, ജനങ്ങൾക്കു നേരിടുന്ന സങ്കടങ്ങളെ പരിഹരിച്ചും നിയമങ്ങളിലുള്ള ന്യൂനതകളെ ചൂണ്ടിക്കാണിച്ചും രക്ഷ തന്നുകൊണ്ടിരിക്കുന്നവരായ ഹൈക്കോടതി ജസ്റ്റിമാരേയും, നിയമങ്ങളേയും അതു സംബന്ധമായ റൂളുകളേയും വേണ്ടപോലെ വ്യാഖ്യാനിച്ചു ജസ്റ്റിമാരെ നീതിനടപാലത്തിലേക്കു സഹായിക്കുന്ന വക്കീലന്മാരേയും, കൂട്ടിച്ചേർത്തുള്ള ഒരു റൂൾ കമ്മിറ്റി ഒരിക്കലും ആവശ്യമില്ലാത്തതാണ്. അനേക അനുഭവദുഷ്ഘാതങ്ങളാൽ റെഗുലേഷൻസ് പ്രകാരം ഉണ്ടാക്കുന്ന എല്ലാ റൂളുകളും നിയമസഭയുടെ അർ വോടും സമ്മതത്തോടും നടപ്പാക്കേണ്ടതാണെന്നുള്ള സംഗതി ഇപ്പോൾ എല്ലാവരുടേയും ഗൗരവമായ ആലോചനയ്ക്കു വിഷയീഭവിച്ചിരിക്കുന്നു. ഈ നിലയിൽ ഓരോ മെമ്പറുടെ നൂതനസൃഷ്ടിയായ റൂൾ കമ്മിറ്റിയുടെ സ്ഥാപനത്തെ ഞാൻ ബലമായി എതിർക്കുന്നു.

ഇനി പറയാനുള്ളതു പലിശ കൂട്ടി വെച്ചിരിക്കുന്നതിനെപ്പറ്റിയാണ്. ൧൦൦-നു ൧൨ വീതം പലിശ അനുവദിച്ചിട്ടുള്ള സെക്ഷൻ ഇവിടത്തെ ജനങ്ങളേയും അവരുടെ ധനാദായസ്ഥിതിയേയും പറ്റി അ

[Mr. T. Kumara Pillai.]

റിപ്പബ്ലിക്കൻ വലുതായ മനോഭാവമുള്ള ഉണ്ടാക്കാതിരിപ്പാൻ നിവൃത്തിയില്ലാത്തതാണ്. ഒരു നിയമമുണ്ടാക്കുമ്പോൾ ആയതു ജനങ്ങൾക്കു വരികാൻ ശക്തിയുണ്ടാകട്ടെ എന്നു വേണ്ടപോലെ ആലോചിച്ചും അറിഞ്ഞും പ്രവർത്തിക്കേണ്ടതാണ്. മറ്റുള്ള രാജ്യങ്ങളിൽ നടപ്പുണ്ടെന്നുള്ള ഏകകാരണത്താലുടൻ അതിനെ പകർത്തുന്ന നയം ഉപരിയായിട്ടുള്ളതല്ല. അങ്ങനെ വേണ്ടിവരുന്ന അവസരങ്ങളിൽ അവിടത്തെയും ഇവിടത്തെയും ജനങ്ങളുടെ നില, അവരുടെ ധനാഭാവസ്ഥിതി, ഇവയെ പറ്റിയുള്ള ഒരു പരസ്പരബോധപരമായ ബോധ്യം നൽകാതെ ൧൦൦-നും ൧൦൦ വീതം പലിശ നിശ്ചയിക്കുന്നത് ഇവിടത്തെ ജനങ്ങളുടെ അനുകമ്പയോടു പരിശുദ്ധമായും അവരുടെ തൊറ്റിലകളേയും വെള്ളത്തിലാക്കുന്നതുപോലെയായിരിക്കുന്നതാണ്. ൧൦൦ നും ൧൦൦ വീതം പലിശ കൊടുക്കാൻ സാധിക്കുന്ന രാജ്യങ്ങൾക്കും തിരുവിതാംകൂറിനും തമ്മിലുള്ള വ്യത്യാസം എന്തെങ്കിലും അന്വേഷിച്ചുറിഞ്ഞിട്ടുണ്ടോ എന്നു സംശയം തോന്നിപ്പോകുന്നു. പറ്റിയുള്ള രാജ്യങ്ങൾ ജനങ്ങളുടെ സ്വത്ത് താൽപ്പര്യമില്ലാത്തവിധം കൂടുതൽ കറവാച്ചിട്ടാണ് വീതിക്കപ്പെട്ടിട്ടുള്ളത്. തിരുവിതാംകൂറിന്റെ സ്ഥിതി അങ്ങിനെയാകട്ടെ. ഇവിടത്തെ സ്വത്തു ഒരുവിധം നശിച്ചു നിലയിലാണ് വീതിക്കപ്പെട്ടിട്ടുള്ളത്. ഇതിന്റെ ഫലമായിട്ടാണ് പറ്റിയുള്ള രാജ്യങ്ങളിൽ കാണാറുള്ള വലിയ ധനികന്മാരെ ഇവിടെ കാണാൻ സാധിക്കാതെ വന്നിട്ടുള്ളത്. ഇവിടെ അതിനാൽ സാധാരണയായി ധനികന്മാരെ സംശ്ലീലിച്ചുപോകുന്ന പല ആളുകൾക്കും ഒരു വിധം സുഖമായി നിത്യവൃത്തി കഴിച്ചുകൂട്ടാൻ മാത്രമേ സ്വത്തുണ്ടായിരിക്കുകയുള്ളൂ. ഈ നിലയിലുള്ള ഇവിടത്തെ ജനങ്ങളുടെ ധനാഭാവത്തിന് നവരൂപം നൽകുന്നതിന് എളുപ്പത്തിൽ അവർ ശ്രമിക്കുന്നതായിരുന്നാലും, അതിനോട് ആവശ്യമായ മൂലധനം എത്രതന്നെ ചെലവായിരുന്നാലും, പണക്കുച്ചവടക്കാരെ ആശ്രയിക്കാതെ അവർക്ക് ഗുണപരമായിരിക്കേണ്ടതാണ്. ഈ അവസരങ്ങളിൽ ഇപ്പോൾ നിശ്ചയിച്ചിട്ടുള്ള കൂടുതൽ പലിശ ആദായപരമാണ്. ഇങ്ങനെ നിശ്ചയിച്ചിട്ടുള്ള പലിശയും മതലം കൂടത്തുരീക്ഷണത്തിനുള്ള ജനങ്ങൾക്ക് എത്രത്തോളം നശിച്ചുവരുന്നു എന്നുള്ളത് ഇപ്പോൾ കോടതികളിൽ കിടപ്പുള്ള കേസുകളുടെ എണ്ണം സാക്ഷ്യം കാണിക്കുന്നതാണ്. ഇതുകാര്യങ്ങൾ നോക്കുന്ന ഗണിക്കാതെ ആദായ പതിനെട്ടു വീതമുള്ള പലിശ നിശ്ചയിക്കുന്നതായാൽ, പലിശയ്ക്കു പണം വാങ്ങുന്നവരുടെ സ്ഥിതി കഷ്ടമായിരിക്കുമെന്നുള്ളതിന്നു സംശയമില്ലാത്തതാണ്. ഇതുകൊണ്ടും ലാഭം മെമ്പർ സാധാരണപ്പെടുത്തില്ല. പലിശയ്ക്ക് മേൽപലിശ കൂടി വേണമെന്ന്

അദ്ദേഹം വിധിച്ചിരിക്കുന്നു. ആ മനോഹരിയെപ്പറ്റി എന്താണ് പറയേണ്ടതെന്നറിയുന്നില്ല. ഇങ്ങനെയൊരമ്പര പ്രധാനമായ ഇവിടത്തെ കൃഷിത്തൊഴിൽ ഒരിക്കലും വർദ്ധിച്ചുവരാൻ പാടില്ലെന്നതല്ല. ഇവിടെ കൃഷിത്തൊഴിൽ വച്ചുകൊണ്ടിരിക്കുന്നവരിൽ അധികഭാഗം ജനങ്ങളും പണക്കാരെ പണസ്സഞ്ചികൾക്കുള്ളിലകപ്പെട്ട് വിഷമിക്കുന്നവരാണ്. അതോടുകൂടി കൃഷിക്കാർ അവരുടെ ദയയാവസ്ഥയിൽനിന്ന രക്ഷപ്പെടാൻ മാർഗ്ഗമില്ലാത്ത നിലയിൽ നിയമവും അനുകൂലിച്ചുനില്ക്കുന്നതായാൽ, അതിന്റെഫലം രാജ്യവും, രാജ്യനിവാസികളും, പിന്നീടുള്ള കാലങ്ങളിൽ അനുഭവിക്കേണ്ടതായിവരുന്നതാണ്. ഈ കാരണങ്ങളാൽ ഇപ്പോഴുള്ള പലിശകൂടുതൽ ഒരുക്കാരണവശാലും ഒന്നുകൊണ്ടും ദേശഗതിപ്രയോഗം പാടില്ലെന്ന ഞാൻ വാദിക്കുന്നു.

MR JOSEPH PANJIKARAN: Sir, the form in which the Civil Procedure Code is presented is seriously taken objection to by most of the members on this side of the House, and, I think, rightly. The reasons stated by Mr. Subba Aiyar for adopting this form were torn to pieces one after another and I hope Mr. Subba Aiyar will, instead of allowing the discussion to continue any further, concede that he is not very earnest about this particular form being adopted. One reason which he has stated and which has not been controverted as yet is that this form was adopted at the suggestion of the late much-lamented, Chief Justice Mr. Raman Menon. I have very great respect for that eminent lawyer. But, with regard to the form of the Civil Procedure Code, I do not think that his authority is conclusive. He was accustomed to the form of the British Indian Civil Procedure Code and so he favoured that form. But I do not think that, in his capacity as Chief Justice of our High Court, he had made any reference to the Government that the form of the present Code was a source of hindrance and inconvenience to the administration of justice. Even granting that the Chief Justice had asked Mr. Subba Aiyar to adopt the form of the British Indian Civil Procedure Code, Mr. Subba Aiyar, instead of giving way to the persuasions of Mr. Raman Menon, should have advocated the cause of the present Code and should have managed to maintain its present form. In that case, much work, time and money might have been saved. After all, by a perusal of the draft Bill as presented to us, excepting the highly objectionable Section relating to interest, there do not seem to be many amendments sought to be made based on decided cases. For the purpose of making these few amendments this thorough overhauling was unnecessary.

Sir, now with respect to the question of interest, I object to Section 31 in its entirety. One of the arguments advanced by Mr. Subba Aiyar concerning compound interest is that the hundi merchant gives compound interest for the money deposited with him. At the end of every year he adds up the interest and puts it along with the principal. This giving of interest on interest, certainly he does. But then Mr. Subba

[Mr. M. R. Madhava Variar.]

Aiyar should have also borne in mind that the interest allowed to depositors is not of the same rate as demanded by him. No hundi merchant advances money at less than 12 per cent. interest, while the depositor is not given more than 8 per cent. So, there is not much force in the argument that compound interest is given to depositors. Then as regards the argument based on freedom of contract, I, along with my friends on this side of the House, think that this argument is without much weight. If freedom of contract is to be allowed, I do not see why the learned Law Member stops at 18 per cent. Moreover, when seeking the repeal of the old Regulation I of 1010, I think the Law Member owes to the House the duty of explaining the circumstances under which that Regulation was brought into existence, and see whether those reasons now exist or whether they have disappeared. In the preamble to that Regulation one seeks in vain for the reasons that brought the old Regulation into existence. If the learned Law Member had gone through the history of that subject and put the House in possession of that information, I think it might have advanced the discussion very much.

With respect to the other amendments which the Bill seeks to introduce, I think that we have to leave the matter in the hands of the Select Committee.

MR. M. R. MADHAVA VARIAR: I agree with the mover of the Bill that the existing Code requires revision and re-enactment, but I do not agree with him in the view that we should revise it to bring it into line with the several judicial decisions and the law in British India. I shall be a party to the amendment of the existing Regulation, only if it causes hardship to the litigant public, if it impedes the work of judicial administration, or if it is incomplete. Now the mover has not adduced any reason to convince us that the existing Regulation, if it is not modified in the proposed form, will cause hardship to the litigant public. On the other hand, he says that it will confuse the litigant public and the lawyers if the Bill is passed in the proposed form. I am amenable to certain changes on the ground that the work of judicial administration is impeded by the defects of the existing Code or by its incompleteness. On those grounds I accept the principle of some Sections. The mover tells us that, if this Bill is passed in this form, it will afford convenience for reference. That is not a valid reason and cannot be accepted by reasonable men, because it is not intended for lawyers and judges alone, but is intended for the public at large. The majority of the people for whose benefit this Bill is going to be passed by this Council are not in need of any reference. Another benefit which, he says, will accrue from the form which he adopts is that an expert body called the Rule Committee will be able to settle the mere details of machinery and he says:

"Three Judges including the Chief Justice and two Vakils of the High Court can be expected to have that close and intimate knowledge of the subject dealt with by the rules which the lay members of the Legislative Council would find it difficult to acquire and apply".

* I do not agree with him there. There are many lay members who are actually acquainted with the defects and dangers of litigation in this country. I confidently assert that many High Court Vakils and Judges do not know so much of the defects and dangers of litigation as many of the lay members. Lay members have brought grievances before the Sri Mulam Popular Assembly, regarding judicial administration. According to their suggestions, certain changes have been introduced in many Regulations. Simply because lay members are not able to grapple with certain legal phrases, we cannot say that they will not be able to have close and intimate knowledge of the subjects dealt with in the Rules. That is no reason for passing this Bill in this form.

So with regard to Section 31, that Section is a friend of the hundi merchant. The rate 18 per cent. interest is very high. Only certain avaricious bankers and hundi merchants receive 18 per cent. interest and the reason for saying that this rate must be allowed is that 18 per cent. is allowed for paddy in the Jenmi and Kudyian Regulation. We know that that provision has oppressed many a tenant. Tenants are crying for a modification of the Jenmi and Kudyian Regulation, because they are handicapped very much by the high rate of interest laid down therein. There are other clauses in this Bill which create hardship for the public. One of such clauses is clause 103:

"Where this Code requires or allows anything other than the recording of evidence to be done in writing in any court, such writing may be in English; but if any party or his pleader is unacquainted with English, a translation into the language of the court shall at his request be supplied to him and the court shall make such order as it thinks fit in respect of the payment of the costs of such translation."

The language of this country is Malayalam or Tamil. According to this Bill the language of the Court will be practically English. Everything except evidence will be written in English. 95 per cent. of the people know only Malayalam or Tamil. They do not know English. It is really creating a hardship to the litigant public to make English the language of the court; and moreover the courts can order under clause 103 the payment of the cost of translation. Under the existing Code, Section 45, the plaint must be distinctly written in the language of the court.

Nothing is mentioned about this clause in the Statement of Objects and Reasons. There are some other clauses also which I do not mean to deal with now.

MR. M. K. KHADIR PILLAI: Sir, as a large portion of the members on this side of the House have elaborately spoken opposing the Bill, I do not think that I am competent to speak more on the subject. Therefore, I have only to support my friends who spoke against the Bill.

MR. M. N. PILLAI: Sir, though the amending Bill has kept intact most of the general principles underlying the existing Regulation, it is seen that the Sections have changed their places and appear

[Mr. A. Govinda Menon.]

under new headings. On this point a layman like myself can have nothing to say. The only thing that has to be said is that the new arrangements should not have the effect of creating any confusion in the minds of the general public as well as those of lawyers. But this Bill deviates from the original Bill in one important principle and that is the question of interest. According to the existing Bill which has been based upon the conditions and practice obtaining in the State, nothing other than simple interest could be recovered and even that at 12 per cent. only in the case of money. An attempt is now made by this Bill to modify this provision by allowing 18 per cent. interest. Sir, this attempt, I am afraid, has been the result of ignorance of local conditions and utter disregard for the welfare of the country. I need hardly say that Travancore is an agricultural country and the majority of the people are of average means. If we take the census of the bankers and money-lenders of this State, we will find that the majority, if not the whole, are foreigners. It is to help these foreigners that this provision is evidently made. Commerce has not yet taken a firm hold among the natives of the country. Now it is foreign exploitation that is going on. Are we, the representatives of the people of the State, to play into the hands of foreign exploiters? The Law Member bemoans the absence of a provision for levying compound interest and the absence of complete freedom of contract with regard to interest. I can understand this in an advanced commercial country, but it is wholly inapplicable to a poor country like Travancore. Sir, the analogy of paddy loans is resorted to by the Law Member to insert the thin end of the wedge in this matter, but he has not taken into account the peculiar conditions of such loans. Those loans are generally intended to be paid after harvest. The convenience of such an arrangement to agriculturists need hardly be described, and people will not find it hard to pay in kind a higher rate of interest. The agriculturist has to get money in exchange for his agricultural produce and he is not thus directly dealing in money, and therefore it is not at all correct to put both money and paddy on the same footing in the case of the agriculturist. The reasons put forward by the Law Member for introducing this curious innovation fall to the ground. I therefore strongly oppose the principle of the Bill.

MR. A. GOVINDA MENON: I stand here, not because I have much to say in the way of fresh arguments as regards matters discussed here by my friends. I can say, I was saved very much by my friend, Mr. P. K. Narayana Pillai, in putting forth my view of the discussion here. I would not only endorse every word uttered by him, but I would also go one better than he did. I would not only say that that Section—

MR. T. K. VELU PILLAI: Louder, please.

DEPUTY PRESIDENT: Mr. Velu Pillai does not hear you. He wants you to speak louder.

MR. A. GOVINDA MENON: I say, I endorse every word which my friend Mr. P. K. Narayana Pillai said in this Council, and I say, I

am prepared to go one better than he did as regards the Rule Committee. If any of you have gone through the rules passed under the Forest Regulation, you will see what the condition of the bureaucratic mentality will be. I am one of those who took some part in the discussion of the Forest Regulation. Of course, that was three years back; but I never dreamt, until a few days ago, that a rule made under that Section will go so far as to be a perpetual nuisance to every one in this country. I can give many examples to show that we cannot fully entrust the executive with the power of making rules. Of course, it is not possible for the legislature to frame every legislation in such a way as not to necessitate any rule being made thereunder by the executive authorities. I would, however, ask this Council to remember this one fact, that in every piece of legislation that comes before us, we should insist that powers for framing and issuing bye-laws under any of its provisions should be reserved to the executive, only in cases where it is absolutely necessary to do so. Further, it should be insisted that all rules and bye-laws passed under any Regulation shall be placed on the table of this Council at the session immediately following the date on which they were passed and that they shall be modified or changed if so desired by the Council in accordance with any resolution which this Council may deem fit to pass thereon.

MR. T. K. VELU PILLAI: Hear, hear.

MR. A. GOVINDA MENON: Then as regards the question of interest, my friend, Mr. Subba Aiyar, will remember that there was a wrestle between myself and some of my friends in the Council during the discussion of the provisions of the Chitties Regulation. There was a time when paddy was sold at Rs. 6 for 20 paras. Now you cannot get 20 paras for less than Rs. 18 which comes to 14 annas per para. There is therefore absolutely no justification for retaining the old rate of interest on paddy at present, much less for urging that since the interest on paddy is 18 per cent. it should be 18 per cent. for money also. The effects of legislation are varied. Legislation sometimes modifies and sometimes creates a custom. In the matter of Regulation I of 1010 it created a custom. It fixed a rate of interest which was not prevalent in that day. Even from the prevailing rate of interest in this country, we can say that 12 per cent. is a rate which is not ordinarily demanded by respectable families. This 12 per cent. has, however, come to be called *maryada palisa*, i. e., the proper rate of interest. Any one who demands more than 12 per cent. is not regarded as a gentleman. If you go to the northern parts, no amount above Rs. 500 or Rs. 600 is generally lent on any rate of interest above 9 per cent. Up to a few years ago, 6 per cent. or 7 per cent. was the maximum rate of interest. No respectable *starwad* will demand more than that. Viewed in another aspect we see that legislation sometimes raises the moral tone of society and sometimes lowers it. Were we to fix a higher rate of interest by legislation people would gradually come to demand that rate of interest. After a time, the 18 per cent. which you now want and which I consider very high, would be regarded as the *'maryada palisa'* and would thus bring about a lowering of the prevailing moral tone of our society.

[Mr. N. Kumaran.]

THE REV. FR. KURIAKOSE VETTIKKAPALLI: Sir, on behalf of the poor agriculturists whom I have the honour to represent here, I wish to add one word of protest against the Section that is brought forward to enhance the interest. I do not wish to bring forward any fresh arguments. The agriculturists, especially of those parts which I have the honour to represent, are constantly in need of money, and at the present rate itself, they—at least a greater number of them—are in the tight clutches of the money-lenders. Even if they were to pay the whole of the fruit of their labour it would not be enough to pay off the interest as it is, and you can easily imagine what their condition would be after this enhanced rate of interest was sanctioned. So, on behalf of them, I wish to protest against that Section.

MR. N. KUMARAN: Sir, the Civil Procedure Code is the longest and probably the most important statute in our Statute Book and the draft Bill before us has now been discussed for not less than three hours. This measure has been attacked on various grounds. The points on which objection has been taken are mainly two, viz., the form in which it is drafted and some of the new provisions that are introduced by the Law Member. Now the Council has had the benefit of an elaborate discussion on both these points. I do not therefore propose to travel over the same ground. What I wish to say is that, if the Bill is accepted in its present form and permitted to go to the Select Committee, it is not possible for us to make whatever changes we require in the matter of the Bill. Now therefore the most important question before us is whether we are going to accept it in its present form or whether it is to be rejected so that it may be introduced in another session in the form of the existing Code.

Now, so far as its form is concerned, it is clear, from the trend of the discussion we had so far to-day, that the members who spoke from this side of the House—most of them lawyers practising on the original side of the legal profession—are unanimous in condemning it. I am not for rejecting the measure simply because certain Sections therein are objectionable. We find that serious objection has been taken in respect of the form. What I therefore submit is that, in deference to the opinion expressed from this side of the House, the learned Law Member should see his way to withdraw the measure and introduce it in the form in which the existing Regulation is cast. When sanction was accorded in a previous Council to introduce the Bill, the necessity for the measure must be presumed to have been admitted by that Council. So the only question we have to decide is whether the House should accept the Bill in its present form. My own opinion is that this change of our Code into Sections, Orders and Rules is not at all necessary. The Law Member admits in his Statement of Objects and Reasons that the existing Regulation has been working satisfactorily. It is not clear why he should then change it into a form which appears irksome to the profession and the public. Even now great difficulty is experienced in finding out the

corresponding British Indian Sections, Orders and Rules whenever the practising lawyer in Travancore is in search of British Indian precedents. The draft Bill will only make the position worse. The draft Bill does not tally with the British Indian Code either in Sections, Orders or Rules. The British Indian Code has about 150 Sections and 50 Orders, while the draft Bill before us has only 125 Sections and 47 Orders, so that the convenience aimed at by the Law Member is not achieved. What I therefore maintain is that, in spite of the expenditure of so much money, time and labour, the Bill has to be recast in a form acceptable to this House.

With respect to the question of interest, I wish to submit a word. I do not believe that it is the intention of the Government that the rate of interest must be raised to 18 per cent. I can bear witness to the fact that Government had only the other day insisted upon a Bank which sought for a loan from Government, to agree to the condition that it would not charge more than 12 per cent. interest on loans taken therefrom. The object of the Government was that the prevailing rate of interest in the country should not go above 12 per cent. With respect to the other points raised in the course of the debate and discussed at great length, I do not think that I should say anything at this juncture. I would now request the Law Member to withdraw the Bill so that it may be recast and introduced into the Council again.

MR. A. HOOGEWERF: Sir, I was not here when the discussion on the Bill was opened by the Law Member. I missed the masterpiece of eloquence—legal eloquence and legal lore—of my learned friend who is a terror to this side of the House. I also lost the splendid speeches of Mr. T. K. Velu Pillai, Mr. G. Paramesvaran Pillai and some other gentlemen, whose names my neighbour here gave me. But I was fortunate to hear the speeches of Mr. S. Krishna Aiyar, Mr. P. K. Narayana Pillai and a few others. I need not say I am not a lawyer, neither am I versed in any kind of law; I am an ordinary layman. And because lawyer members on both sides of the House wanted a pronouncement from a layman's point of view, I am forced against my wish to stand here to-day. I have neither money to lend, nor can I borrow. So I am on the safe side of money and property. The most important among the many Sections that interested me was the Section relating to interest. The present interest is most unconscionably high; and to add on to the agony would be a terrible business. I, therefore, stand here to oppose the Bill unless Mr. Subba Aiyar, whom I have been watching most carefully, proves otherwise that my conviction regarding interest is on the wrong side. If it is bad from the people's point of view, as has been represented by the members on this side, I also oppose the Bill—of course, subject to this proviso that the Law Member proves that it is right. Another point is with regard to the Rule Committee. If this legislature would lose its right, I would be against that also.

MR. K. P. RAMAN PILLAI: Sir, I have no quarrel with the Law Member for the form which he has adopted for framing the Civil

[Mr. K. P. Raman Pillai.]

Procedure Code. I am inclined to think that it is not open to objection for the simple reason that the new form makes reference to existing decisions more difficult and even inconvenient. No doubt, if the Bill in its present form were to be accepted, I daresay some enterprising young lawyer would come forward with a hand-book of reference and set all our minds at ease. After all, the objectionable side of the Bill is not so much the form as the matter. Section 93 of Part IX is the most objectionable thing of all. I heard my previous speakers to say that the power of making rules had been taken away from this Council and given to a Committee called the Rule Committee. But a reading of Section 94 would show that the Rule Committee after all is only an advisory body and the real power of making rules is now vested in the High Court, with the possible check of Government. For, in Section 94, it is said:

"The Rule Committee shall make a report to the High Court on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and *before making any rules under Section 92 the High Court shall take such report into consideration*".

So that, the real power vests in the High Court. In other words, the High Court is now attempted to be converted into a body of law-makers, while their real function is to administer and interpret the law which this Council is to make. No doubt, there is the check—the bureaucratic check, as my friend, Mr. P. K. Narayana Pillai, would call it. The object of this check is mentioned at page 197 of the Bill:

"The Government retain, however, the right to sanction such alterations or additions with a view to be guided by the opinion of the public, if, and when, expressed".

So that, if the High Court were to recommend a rule, which, in the opinion of the Government, is contrary to the interest or opinion of the public, then the Government would have the option of vetoing that rule. Public opinion is a very varying and unascertainable commodity. From my short experience of politics in Travancore, I might safely say that any amount of criticism in the press and any amount of speech-making on the platform has very little effect on the Travancore Government. I know that a memorial signed by 52 members out of the 100 members in the Sri Mulam Popular Assembly was not considered to be expressing 'public opinion'. That being so, if the power of making rules were to be taken away from this Council and vested in the High Court, I fear, there would be nothing to check it. Government will be helpless to ascertain what the opinion of the public is in a particular matter. So that this constitution of a Rule Committee with merely advisory powers, and this conversion of the High Court into a subordinate legislature for definite purposes, I submit, is objectionable. Part IX has to be omitted.

There are other Sections also in the Bill which go to show that Government are anxious to usurp the functions of this Council. For example, Section 52 (3) (a), says that Government have the power to release judgment-debtors from civil jails. There are also other

similar provisions. My submission is that it is really sanctioning interference of the executive with the judiciary, which is not a really commendable thing for us to sanction. There is already a complaint that the executive is interfering,—no doubt, behind the screen,—with the discharge of the duty of the judiciary. Knowing as we do the feelings of the people in the country, I think we shall be failing in our duty if we do not protest against Part IX and other provisions in the Regulation which give Government greater powers than they possess under the existing Regulation.

As for the fear of delay that might be occasioned by reserving all the powers with the Legislative Council, I may promise on behalf of the non-official members that we shall be very prompt in answering the calls of the executive, to meet in this hall whenever it wishes.

I must also protest against the provision for interest. It really ought to go in as a separate Bill. No doubt, the bankers and hundi merchants would now be anxious to get a greater rate of interest, because I doubt not that the Income-Tax Commissioner would be pressing his claims, and they would like to pay income-tax from their customers. Not only that. From so early a date as 1010 M. E., we were having only 6 per cent. and 10 per cent. interest. In civilised countries they are trying to keep the usurer down, to reduce the rate of interest and with that object co-operative institutions and so forth have been started and laws promulgated. But in this "Land of Charity" we seem to be moving in the wrong way. While the western countries are moving away from Shylock, I fear we are moving towards him, ultimately to embrace him. (*Laughter.*) So, that part of the Bill has also to be completely deleted. For these reasons, I join the previous speakers in opposing the motion that the Bill be read in Council.

MR. V. SUBBA AIYAR: Sir, I am extremely thankful to the learned members on the other side, who have been trying to criticise the Bill on various points. I may sum up the criticisms under four heads: first, as to the form of the Bill; second, as to the delegation of the power of amendment of a portion of the Regulation to the Rule Committee, instead of vesting it in the Council itself; third, embodying the provision as to interest in this Bill instead of enacting a separate law for the same; and fourth, the provision as to the rate, amount and nature of interest. These, I believe, are the main heads of criticism. Of course, there were one or two minor matters which were referred to in the course of the discussion, but all those matters of detail may, I believe, be considered by the Select Committee, if the Bill is to be referred to it at all. I shall therefore confine my remarks to these four main heads.

First, let me begin with the interest question, in respect of which there seems to be practical agreement on the non-official side. In the first place, I must demur to the suggestion of my friends that it ought not to find a place in the Civil Procedure Code. Every one of us is aware of the Regulations of 1010 M. E. But unless we refer to the Sections themselves we do not know whether they

[Mr. V. Subba Aiyar.]

enact substantive law or procedure law. The Regulations of 1010, do not purport to be substantive law. Regulation I does not say that no man shall receive more than 12 per cent., but what it does say is:

"Munsiffs are hereby prohibited from allowing in their decrees a greater rate of interest in any suit brought before them than twelve rupees per cent. per annum."

"In decrees on suits, the Munsiff shall allow, in the decree the interest that may be due from the period the suit may have been instituted to the day on which the decree shall be passed".

That portion of the Regulation applies only to the Munsiffs, although practically Zillah Judges exercise that power. Regulation IV relates to Zillah Judges.

"In decrees on civil suits, the interest must be charged on the principal from the date of the decree to the day of its execution."

So that what Regulations I and IV of 1010 say is that Munsiffs shall not award a greater rate of interest than 12 per cent. in their decrees but they do not say that no man shall receive more than 12 per cent. interest; nor do they say that, if more than 12 per cent. has been included in a settled account, that account shall be reopened. They only enact that a Munsiff or a Zillah Judge shall not decree more than what is permitted in the Regulation. And what I have said in Section 31 (1) is:

"In suits for money, or for grain, no Court shall, in respect to the period antecedent to the institution of the suit, allow in its decree a greater rate of interest."

I am, word for word, so to say, following the old Regulation when I say that no Court shall award more than a certain percentage of interest. And I do not know why there should be so much complaint about substantive and adjective law.

My friends on the other side do know that I perfectly appreciate any amount of criticism and even severe language. I am not at all disturbed and I do not take such criticisms amiss. What I ask is whether I have introduced any new procedure stealthily into this Bill or whether I have smuggled anything into this Bill. It is a matter for this Council to decide.

MR. T. K. VELU PILLAI: Sir, I wish to ask a question, viz., whether at the time Regulation I of 1010 was passed the legislature actually understood the distinction between adjective and substantive law.

MR. V. SUBBA AIYAR: I am not in a position to say anything about it. It is a matter a century old.

What I say is that, even under the existing law, there is no prohibition at all for anybody demanding 5 per cent. *vattam*; but what we are concerned with is that no court shall award a man more than 12 or 18 per cent. interest. I did not want to avoid public criticism by introducing this provision in this Bill instead of having a separate enactment. I have always thought that, when there are twenty-eight elected members of the people, they are quite competent to criticise any particular Bill. If that Bill is not acceptable to the public, certainly it will

not be acceptable to this Council, because the members here are the representatives of the people. I explained the provision in the Statement of Objects and Reasons and devoted a large portion of my speech this morning to the question. Does this signify any covert intention? Is it consistent with stealth or smuggling? It is rather uncharitable for the members to say that it was with a stealthy or ulterior motive, *i. e.*, to escape detection and thereby criticism that I put this clause into this Bill.

MR. T. K. VELU PILLAI: Sir, I wish to ask one more question, *i. e.*, whether at the time this Bill was drafted, Mr. Subba Aiyar actually adverted to the distinction between adjective and substantive law.

MR. V. SUBBA AIYAR: It is a matter relating to the interest the court was competent to provide in the decree. It is a matter relating to that, and, therefore, that provision should find a place in the Civil Procedure Code, and nowhere else. It was not because I wanted to make any difference between substantive and procedure law, but because it was a matter which the Court had to decide that I introduced it here. But when so much objection was taken on the ground that I stealthily tried to incorporate substantive law into procedure law and procedure law into substantive law, I contend that there is no foundation for making such a serious charge. We are not concerned with the question as to what a person may or may not receive from the debtor without any foundation. But what we are concerned with here is, what is it that a court can decree? That, in my humble opinion, can find a place in this Code. After all, we are fighting the shadow and not the substance. The provision of this Section in the Civil Procedure Code will save a lot of trouble to the civil courts, lawyers and litigants, having to refer to some other Regulation on the question of interest. I have not the slightest objection to any amount of fair criticism and shall be glad to plead guilty, if there was any such intention in my mind. I will ask my friends to consider whether they were justified in this remark and leave the matter there.

MR. P. K. NARAYANA PILLAI: May I know whether the British Indian Code contains a rate of interest corresponding to this?

MR. V. SUBBA AIYAR: No, for this reason that in British India there is no Regulation corresponding to the Regulations of 1010, directing courts to decree in a particular way. There the whole thing is based on freedom of contract, and, unless, therefore, the interest claimed is unconscionable they do not do anything of the kind except as to future rates of interest. Here we have a law directing the Munsiff or the District Judge to decree in a particular way.

MR. T. K. VELU PILLAI: I wish to know from Mr. Subba Aiyar whether there was any move in any of the Indian legislatures to the effect that they should have some Regulation like those of 1010 M. E.?

MR. V. SUBBA AIYAR: In the Indian legislature there was not only a move but an Act that freedom of contract should be restricted.

[Mr. V. Subba Aiyar.]

in some way. It was in the year 1918 or 1919—I do not exactly remember the year—that an Act was passed about interest, and courts are empowered to interfere under certain circumstances.

I have pointed out in what particular portion of the statute this has to find a place. I shall now deal with the next objection—the objection as to whether the rate should be 12 or 18 per cent. I never said that there should be complete freedom of contract. I was only referring to freedom of contract when I quoted the opinion of some of the Judges of the High Court. With reference to this aspect of the question, there are four points to be considered: (1) the raising of the interest on money from 12 to 18 per cent; (2) whether there should be any modification in respect of the amount of interest awardable till the date of suit in the case of money; (3) whether there should be any limit to the amount of interest awardable after suit; and (4) whether compound interest under certain circumstances may be awarded. Under the last three heads, I heard no objection. I believe Mr. G. Paramesvaran Pillai said that there ought not to be any restriction as to the amount of interest recoverable after suit as the creditor could not be responsible for the delay. That point may therefore be regarded as accepted. There were others who agreed with him. My friend, Mr. Krishna Aiyar, said that there is nothing objectionable with regard to the provision relating to compound interest; and Mr. G. Paramesvaran Pillai would have it discussed in the Select Committee. I did not hear anything about the interest being equal to the principal before the date of suit. So that, practically, the whole discussion centres on one point, as to what the interest should be—12 or 18 per cent. In order that there may not be any distinction between money and paddy—probably it may be said there need be no logic in legislation—the interest on money has been raised from 12 to 18 per cent. and the interest on paddy reduced from 20 to 18 per cent. That was the line of my argument and I did not advance any other. So far as I could gather, the House seems to be against 18 per cent. in the case of money. I think that whether it should be 18 or 12 per cent. is a matter which could be very carefully threshed out in the Select Committee. I can assure my friends on the other side of the House—and I think those who were with me during the Select Committee discussion on the High Court Regulation Amendment Bill will agree—that if we are able to convince one another of the hardship or inconvenience or the absence of necessity of any particular measure, we generally agree and bring the Bill to a shape which would be acceptable to the public. The mere fact that a Bill has been introduced here does not prevent the Council from discussing it at a later stage. We are at the most preliminary stage now. The Bill has to be threshed out by the Select Committee; the Bill has to come again to the Council and it has to pass it once, twice and thrice. The members need not entertain any doubt that it is going to be passed into law as 18 per cent. Members do know that, under the Legislative Council Regulation, the Bill is not going to become law unless the Council passes it.

Now I pass on to the next point, i. e., the part relating to the Rule Committee, about which much was said. I only said that the object in putting in that provision was that the time of the Council need not be taken up in making small amendments that may be required in a Regulation of this kind.

MR. K. PARAMESVARAN PILLAI: I want to know how many amendments were made to this Regulation within the last thirty years.

MR. V. SUBBA AIYAR: Not more than one or two, although we meet with ever so many difficulties in the course of our ordinary practice that make us believe that many amendments are required in the Regulation itself. That only shows what the difficulty and delay that an amendment of a Code of this kind through the legislature would involve and it may amount to supplement the necessity for a Rule Committee. That apart, if the House is not agreed to the provision regarding the Rule Committee, I am not for delegating it to that authority. I never meant that the power of the House should be delegated to some other Committee. But I may explain that the ordinary substantive portion of the Regulation is in the main part and the purely procedure portion of it is in another part. These matters of detail, I thought, might be safely left to the Rule Committee and that they might very well be left to be decided by members of the High Court and the legal profession. But if that is not acceptable to the House, it is open to the Select Committee to delete that part, as has, in many other previous occasions, been done when Bills were referred to Select Committees.

The only question that now remains is with regard to the form.

DEPUTY PRESIDENT: Do you, Mr. Subba Aiyar, concede that the Council might retain the privilege of making the necessary alterations in the Civil Procedure Code without any reference to the Rule Committee?

MR. V. SUBBA AIYAR: Certainly it is not my wish: it is the House that has to accept it; and unless the House accepts it, it cannot become law. So that, if the members of the House are opposed to any particular measure, I cannot retain it, because my will cannot be law. I beg to submit that the reference to the Select Committee will not in any way interfere with the power of this Council.

MR. G. PARAMESVARAN PILLAI: May I ask if Mr. Subba Aiyar accepts that, and if the provision re Rule Committee may be taken away, what further justification he has in making this re-arrangement.

MR. V. SUBBA AIYAR: I am coming to that.

The only other point of objection is about the form. The question naturally asked is why we should adopt this form. A great deal was said about the form in which the Bill was presented. It was said that very great difficulty would be felt in mastering it. With all deference to my learned friends, may I say that it is not so difficult as they imagine? For a few months there may be some difficulty. But it should not be supposed that it will be stamped as a piece of legislation which will be perpetually confounding to all practitioners.

[Mr. V. Subba Aiyar.]

I will answer Mr. G. Paramesvaran Pillai's question first. Let me say what the Bill contains. One or two Sections deal with important matter; every detail connected with that matter is provided for under a particular Order as Rules. Matters connected with the forms for entertaining a suit, the production of a document, execution, etc., are provided for in the main body and the corresponding details under the head 'Orders'. These could be referred to without much difficulty. But then, my friend asks "why is it that you put it in this form?" As Mr. Panjikaran has also referred to it, I have to say a little more in detail. Before I drafted the Bill, I had a discussion, as I said, with the late Chief Justice who was acquainted with Cochin and British Indian Codes. I discussed with him on two days about the relative advantages or disadvantages of this form. He said that he was attentively listening to every one of my arguments and after that he stated that this particular form must be adopted. If my friends refer to the English Law they will find that the whole thing there is in the form of Orders and Rules. If I am accused of slavish imitation of British Indian law, I plead guilty along with eminent judges and jurists.

MR. G. PARAMESVARAN PILLAI: But under different conditions, Sir.

MR. T. K. VELU PILLAI: We do not say that it was slavish imitation, but that all the original things are not found here.

MR. V. SUBBA AIYAR: If any practising lawyer has to refer to Travancore Law Reports to argue a case the first thing he does is to take up the British Indian Code. He finds that most of the Orders and Rules of the British Indian Code are referred to there. The late Chief Justice, therefore, advised me very seriously and strongly that I should adopt this form in the matter of the Civil Procedure Code, so that we might have the benefit of the rulings of eminent and learned judges both in England and India. Therefore this form was adopted. There is nothing in it so harmful as my friends would suppose. If my friends have read the City Municipality Act or the Local Boards Act or any of the recent legislative enactments in British India, they will find that the substantive portion is put in the body of the act and the rest in the form of schedules which may be modified. Whatever may be the agency that has to modify it, whether it is the Legislative Council or the Government, so far as these minor matters are concerned, they are relegated to a separate portion of the act instead of being bound up with the important portion thereof. This appealed to me to a great extent. I know that there is only one High Court in Travancore the jurisdiction of which is not so large as that of British Indian Courts. The substantive and important portion is all under one head and the processual and unimportant portion under another head. We have only to remember about thirty or forty Orders which any lawyer can master—I must beg Mr. C. P. Kochukunju Pillai's

pardon. What I, therefore, appeal to this House is not to oppose the Bill on this solitary ground. In British India also there are numerous litigants and lawyers; and, after this new Code in its present form was introduced they were able to become familiar with it in a few months. The Order system is more methodical, more satisfactory and easier for reference, and we shall be in a position to pick it up without difficulty. By so doing we get, in the words of the late Chief Justice, the advice of the best legal talent in India and England for nothing. I ask the House, if it would, for the mere sake of technical form, reject this Bill which is in the best legal form and ask me to do the laborious task of rearranging, amending and presenting it in another form; I appeal to the House to say whether, to save the trouble of mastering it in a month or two, it would have the whole Bill rejected and wait till a new Bill is introduced in the Council. Personally I shall be glad as the drafting of such a Bill would take a long time and I shall be spared the trouble and worry of steering it through the Select Committee and through this Council.

We have spent a lot of money in preparing the present Bill. I repeat that I discussed the matter with the late Chief Justice whom I consider to be a very learned jurist, before I made up my mind to adopt this particular form, and I think that we should take note of the respect that is due to him before we reject this Bill. In our previous enactment on the subject we adopted the British Indian Act in the form in which it was enacted then. I do not see why we should not do the same thing now. If the substance is acceptable the form is immaterial. It is open to the Select Committee consisting of a large number of learned members of this House to modify the Bill in any way they choose except of course the form. I have said what I have to say in the matter and I am quite confident that the members will exercise their sound judgment before voting on the motion now before them.

DEPUTY PRESIDENT: Before putting the question to the vote, gentlemen, would you just allow me to say a few words? I have been carefully following the discussion on this subject. The two main grounds of objection that were noticed at some length by the members were the existence of the Rule Committee, and the enhancement of the rate of interest. These were the two solid objections amongst others that were noticed in the course of the discussion. If the acceptance of the principle at this stage would take away the right of the Council to get rid of the Rule Committee, I do not want you to accept Mr. Subba Aiyar's motion. If there is a distinct assurance to you that he is absolutely indifferent as to whether the Rule Committee is retained in the form contemplated in the draft Bill or whether the Council proposes to reserve to itself the final power of legislation, the reading of the Bill at this stage does not take away the right of the Select Committee or of the Council to delete the portion under which legislative authority is vested in a different body. Then the only other question is about the rate of interest. That is a matter of detail. However, gentlemen, I do not

[The Deputy President.]

want to interfere with your discretion. I do not propose to discuss the question.

I daresay I shall personally be put to some inconvenience, if at this late stage—I have been at the bar for over twenty-seven years—I am required to study a new Civil Procedure Code. It may cost me some inconvenience. But if, in the interests of the administration of justice, such a course is found to be necessary by the Council, I certainly shall be willing to go to school (*laughter*) or withdraw from the profession. On the score of personal inconvenience I shall not stand in the way of a new measure being enacted if in the opinion of the Council it is going to facilitate the administration of justice in the land. With these few words I put the question. The question is that the Bill be read in Council.

MR. P. K. NARAYANA PILLAI: Is it with the reservation agreed to by Mr. Subba Aiyar?

DEPUTY PRESIDENT: Yes, with the reservation, *viz.*, that the provision *re* the Rule Committee is to be deleted.

MR. T. K. VELU PILLAI: Any assurance with regard to interest?

DEPUTY PRESIDENT: That rests entirely in the hands of the House. Why I wanted a special admission from Mr. Subba Aiyar was to know that your accepting the principle at this stage should not disqualify you at any later stage from re-examining the provision with reference to the Rule Committee. The other is a matter which is entirely left to the Select Committee. I think it is not desirable to go any further than that. I will now take the sense of the House.

MR. K. PARAMESVARAN PILLAI: What about the form?

DEPUTY PRESIDENT: It is left entirely to the Council. If in your opinion, gentlemen, the retention of the form of the Civil Procedure Code is an essential condition of the satisfactory administration of justice in the country, I do not want you to vote for the reading of the Bill. If, on the other hand, you think it is an unessential matter, you are at perfect liberty to agree to the Bill being read. Subject to the reservation as regards the Rule Committee, the question before the House is that the Bill be read in Council.

MR. N. RAMAKRISHNA PILLAI: May I know whether Mr. Subba Aiyar has any objection to withdraw that Section at this stage?

DEPUTY PRESIDENT: Its non-deletion at this stage will not stand in the way of the Council deleting it later on. You need not fear the old official block. You have got an elected non-official majority. The motion was put and carried with the casting vote of the President.

A poll was taken with the following result :

AYES—23.

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| 1. Mr. K. Anantanarayana Aiyar. | 12. Mr. M. Raja Raja Varma. |
| 2. „ I. C. Chacko. | 13. „ V. Subba Aiyar. |
| 3. „ R. Dhanukoti Pillai. | 14. „ A. J. Van Ross. |
| 4. „ K. V. Natesa Aiyar. | 15. „ A. Govinda Menon. |
| 5. „ K. George. | 16. „ T. Lakshmana Pillai. |
| 6. „ L. C. Hodgson. | 17. „ J. John Nidiry. |
| 7. „ R. Krishna Pillai. | 18. „ P. Paramesvaran. |
| 8. Dr. N. Kunjan Pillai. | 19. „ N. Ramakrishna Pillai. |
| 9. Dewan Bahadur Dr. P. N. Lakshmanan. | 20. „ C. Ramankunju. |
| 10. Mr. S. Paramesvara Aiyar. | 21. „ K. P. Raman Pillai. |
| 11. „ W. H. Pitt. | 22. „ S. Subrahmanya Karayalar. |
| | 23. Deputy President. |

NOES—20.

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| 1. Mr. S. Adam Sait. | 11. The Rev. Fr. Kuriakose Vettik-
kapalli. |
| 2. „ T. M. Chidambaranathan
Pillai. | 12. Mr. M. K. Madhava Varma. |
| 3. „ Paul V. Daniel. | 13. „ M. N. Pillai. |
| 4. „ A. Hoogewerf. | 14. „ N. Padmanabha Pillai. |
| 5. „ M. K. Khadir Pillai. | 15. „ Joseph Panjikaran. |
| 6. „ C. P. Kochukunju Pillai. | 16. „ K. Paramesvaran Pillai. |
| 7. „ S. Krishna Aiyar. | 17. „ G. Paramesvaran Pillai. |
| 8. „ T. Kumara Pillai. | 18. „ K. C. Raja Raja Varma. |
| 9. „ Tariatu Kunjithoman. | 19. „ Dominic Thoman. |
| 10. „ V. Kunjukrishna Pillai. | 20. „ T. K. Velu Pillai. |

The title of the Bill was then read by the Secretary.

MR. V. SUBBA AIYAR: I beg to move that the Bill be referred to a Select Committee.

MR. K. GEORGE: I second it.

The motion was carried unanimously.

MR. V. SUBBA AIYAR: Sir, I beg to move that the Bill be referred to a Select Committee consisting of Rao Bahadur K. A. Krishna Aiyangar; (2) Mr. P. K. Narayana Pillai; (3) Mr. Joseph Panjikaran; (4) Mr. K. P. Raman Pillai; (5) Mr. A. Govinda Menon; (6) Mr. G. Paramesvaran Pillai; (7) Mr. T. K. Velu Pillai; (8) Mr. R. Krishna Pillai; and (9) Mr. V. Subba Aiyar.

We shall require six months' time.

MR. K. ANANTANARAYANA AIYAR: I second it.

MR. K. C. RAJA RAJA VARMA: I wish to add the name of Mr. K. V. Rangaswami Aiyangar.

MR. V. SUBBA AIYAR: I shall only be too glad if he agrees to it. This is a Bill in which the labours of the Select Committee will extend to not less than 3 or 4 months. If he can spare all the time, I have not the slightest objection.

[Mr. V. Subba Aiyar.]

DEPUTY PRESIDENT: It rests with him whether to agree or not.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I cannot say anything definite. The question rests not with me, but with my employers.

DEPUTY PRESIDENT: We have to lose the privilege of having him. Mr. Subba Aiyar will be the Chairman of the Select Committee. Does the House agree to the Select Committee as above stated being appointed with direction to submit a report within 6 months?

The motion was carried.

THE LIMITATION REGULATION AMENDMENT BILL.

MR. V. SUBBA AIYAR: The Limitation Regulation Amendment Bill came up for introduction in the prior Council on the 9th November 1921, but was put off for this Council as being an important measure. The Civil Procedure Code and the Limitation Regulation have generally to be taken up together. It was, therefore, that when the Civil Procedure Code was taken up for amendment, this was also taken up.

One of the main provisions that have been made is about the limitation as to the loan of paddy. I believe it is common knowledge among those who are acquainted with the northern districts, that in the case of hypothecation bonds for loans of paddy they were sued upon up to the end of 12 years from the date on which the cause of action arose.

DEPUTY PRESIDENT: Are you introducing the Bill or discussing the principle?

MR. V. SUBBA AIYAR: Please excuse me, Sir. I beg to move that the Bill be read in Council.

MR. R. KRISHNA PILLAI: I second it.

MR. V. SUBBA AIYAR: In the case of paddy it was understood that the ordinary limitation of 12 years would apply; and the Alleppey and other District Courts did decide accordingly. But when the matter was brought up to the High Court, it was decided recently that the period of limitation was only six years. It is, therefore, now proposed to provide that a suit may be brought within 12 years. That is one of the main amendments. With regard to the other Sections of the Regulation, the scope of clause 5 has been extended so that the provisions of the Limitation Regulation empowering the court to excuse delay may not only be extended to suits covered by the Limitation Regulation but also to suits under other Regulations. In clause 7, the existing provision has been amended with a view to restrict the applications mentioned therein to the execution of decrees alone. As the Section stands at present, any application affecting a minor may be put off until the minor comes of age to the inconvenience of courts and parties. In the second